UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA
BATON ROUGE DIVISION

Potts file

MINUTE ENTRY:
February 1, 1965
WEST, J.

JAMES EARL POTTS, etc., ET AL

versus

CIVIL ACTION

JOHN J. McKEITHEN, Governor of the State of Louisiana, ET AL

NO. 3128

This cause came on for hearing this day on an order to show cause why temporary injunction should not issue.

PRESENT: Nils R. Douglas, Esq.
Murphy W. Bell, Esq.
Attorneys for plaintiffs

James E. Phillips, Jr., Esq.
Attorney for respondents

Counsel join in stipulation regarding testimony of witnesses, if called.

Defendants file answer to complaint, and plaintiffs file amended complaint.

The Court orders this hearing to be considered a hearing on the issuance of a permanent injunction and the relief prayed for by plaintiffs to be GRANTED, order to issue accordingly.

****

Robert F. Collins, Esq.
Nils R. Douglas, Esq.
Lolis E. Elie, Esq.
Murphy W. Bell, Esq.
Carl Rachlin, Esq.

Hon. Jack P. F. Gremillion
James E. Phillips, Jr., Esq.

THE FOLLOWING DOCUMENTS ARE THE

BEST AVAILABLE.

10 A.M. 9/8

Rm. 324

Put in file

Robert Stewart FBI agent

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

BATON ROUGE DIVISION

JAMES EARL POTTS by his father and next friend, ALVIN POTTS,

Plaintiff,

vs.

JOHN J. McKEITHEN, Governor of the State of Louisiana, THE LOUISIANA STATE BOARD OF EDUCATION, WILLIAM J. ROUÈ, as Superintendent of Public Education, as Executive Secretary of the Louisiana State Board of Education, and also as Chairman of the Executive Committee of Louisiana Polytechnic Institute, F. JAY TAYLOR, President of Louisiana Polytechnic Institute, LOUISIANA POLYTECHNIC INSTITUTE, W.E. WHITSCHIRE, is President of the State Board of Education.

Defendants.

CIVIL ACTION NO. 3267

* * * * * * * * * * * *

COMPLAINT

Denied

I. JURISDICTION

A. The jurisdiction of this Court is invoked under Title 28 U.S.C. Section 1331, as this section arises under the Fourteenth Amendment to the Constitution of the United States Section 1, and Title 42, U.S.C., Section 1981. The matter in controversy, exclusive of interest and costs, exceeds the sum or value of $10,000.00.

B. The jurisdiction of this Court is further invoked under Title 28, U.S.C., Section 1343, in that:

> This action is also authorized by Title 42, U.S.C., Section 1981, to be commenced by any citizen of the United States or other persons within the jurisdiction thereof to redress the deprivation under color of state law, statute, ordinance, regulation, custom or usage, of rights, privileges and immunities secured by Section 1 of the Fourteenth Amendment of the Constitution of the United States.

C. The jurisdiction of this Court is further invoked under the provisions of the First Amendment of the Constitution of the United States, as incorporated in the Fourteenth Amendment, prohibiting governments from the making of laws abridging the freedom of speech or the right of the people peaceably to assemble and to petition the government for a redress of grievances.

II. NATURE OF CLAIM:

This is an action for temporary, preliminary and permanent injunctions to restrain defendants, Louisiana Polytechnic Institute, and the Louisiana State Board of Education and their agents, representatives, servants and successors in office from hindering, obstructing and otherwise interfering with the right of the plaintiff to attend Louisiana Polytechnic Institute without suspension, expulsion or probation or in any way taking disciplinary action against the plaintiff as the result, direct or indirect, of his participation in peaceful and lawful demonstrations against racial segregation and discrimination whether or not the same may lead at any time to the plaintiff's arrest and incarceration. The plaintiff further seeks the issuance of a Mandamus ordering all defendants to immediately reinstate plaintiff, James Earl Fobbs, as a student at Louisiana Polytechnic Institute.

III. PARTIES

A. The Plaintiffs are:

1. Plaintiff JAMES EARL FOBBS is a citizen of the United States and the State of Louisiana, and is a Negro minor who is here represented by his father and next friend, ALVIN FOBBS.

B. The Defendants are:

1. JOHN J. McKEITHEN, is the duly elected governor of the State of Louisiana.

2. THE LOUISIANA STATE BOARD OF EDUCATION is a body politic having its domicile in the city of Baton Rouge, Parish of East Baton Rouge. Said Board is authorized by L.S.A. -R.S. 17:2 to be sued in all matters relating to public schools except cases within the jurisdiction of the parish school board.

3. WILLIAM J. DODD, is the duly elected Superintendent of Public Education and also executive secretary of the State Board of Education, and is by authority of L.S.A.-R.S. 17:11 ex-officio Chairman of the executive committee of Louisiana Polytechnic Institute.

4. W.E. MEHAFFEY, is President of the State Board of Education.

5. F. JAY TAYLOR, is the President of Louisiana Polytechnic Institute.

6. LOUISIANA POLYTECHNIC INSTITUTE is a state educational institution in Ruston, Louisiana, administered by the defendant, Louisiana State Board of Education.

IV. FACTS:

A. ON INFORMATION AND BELIEF:

1. The plaintiff herein is a 19 year old Negro citizen of the United States and the State of Louisiana who was enrolled in the undergraduate Louisiana Polytechnic Institute pursuant to an order of this Court of February 1, 1965 (a copy of said order is hereto annexed). The plaintiff thereafter continued his studies and was attending the summer session at the school when the incidents giving rise to this complaint took place.

2. That on July 23, 1965, plaintiff and approximately 350 others, with Negroes and whites, were lawfully and peacefully picketing the Jackson Parish police station and jail in Jonesboro, Louisiana. In an demonstration, the group was peacefully and lawfully protesting the arrest, imprisonment and (police treatment) of other Negroes and been peacefully endeavoring to aid they were demonstrating in behalf of themselves and other Negroes for certain Constitutional rights. While the plaintiff and the other demonstrators were marching and singing, they were accosted by 25 or more law enforcement officials lead by Sheriff Mark Z. Lee. The leader of the plaintiff and the other participants of the demonstration were throughout singled out by the said sheriff, identified and arrested.

The plaintiff was then taken to jail where he was [illegible] by [illegible] and physical abuse by the officers. In the early hours of the morning, the plaintiff was released on $2,000.00 bond and charged that he had been charged with disturbing the peace, resisting arrest, threatening a police officer and violating curfew.

3. Plaintiff attended his classes on July 26, but was arrested on July 29 by the Dean of Students having that he was to meet with the Disciplinary Board of the Institute at which time he would be "formally discharged". The plaintiff contacted attorneys who attempted to intercede with the school officials. They were advised that plaintiff's suspension was indefinite and that the fact of an arrest and incarceration was established, and that the hearing related only to the length of the suspension and that the plaintiff could not be represented at the hearing. Plaintiff believes and therefore avers that the

regulation under which he was punished and suspended is a State Board of Education regulation, a copy of which is hereto appended, which was adopted by the Board on November 16, 1961 at the time of the so-called "sit-ins" protesting racial segregation and has as its sole purpose the intimidation and harassment of Negro students who might desire to demonstrate and participate in Civil Rights activities.

4. The following day the plaintiff went before the Discipline Committee at which time he was rebuked and insulted for having been involved in the demonstration, and advised that he and other members of his race "wanted too much". Plaintiff was summarily advised that the state regulation made his suspension automatic and was further advised that although there was an appeal provision, the Committee hearing the appeal would be made up of most of the same people who were present and that he must decide then and there whether he wanted to appeal and sign a statement accordingly. When he asked if he could consult an attorney, plaintiff was informed that he could not. Plaintiff refused to sign the statement and was advised he was suspended as of that moment.

5. On August 2nd Plaintiff called the President of the Louisiana Polytechnic Institute and asked for an appeal, but was advised that it was too late and that his suspension was final. The Discipline Committee and the President thereby executed their authority as delegated to them in that they denied the plaintiff the right to a proper appeal pursuant to its own regulations.

6. That the plaintiff in no way was accorded due process in the hearing procedure in that he was advised before hand of the outcome, not allowed to bring in witnesses or explain his case and advised that any appeal would be without hope. That Institute thereby denied the plaintiff all and each facet of due process in conducting a "hearing" which was nothing but a perfunctory act by officials who, as he was told, had already made up their mind. The plaintiff's criminal case was, after the hearing and suspension, removed to the Federal Court.

we don't know if he asked to have his own witnesses

?

7. Plaintiff was and continues to be irreparably injured by the use of a regulation which is so vague, broad and indiscriminate as to be unconstitutional and which on its face applies to any act, however minor or however justified, which results in the arrest and incarceration of a student. Passed only for the purpose of intimidating Negroes from participating in the Civil Rights movement, the regulation thereby unfringes on these rights of students

to freely exercise rights guaranteed under the Constitution of the United States. The regulation further is and was arbitrarily applied, and results in not only a denial of due process through the failure to provide a fair hearing, but further impedes and prevents the plaintiff from exercising his right to remain in an institution of higher learning without being punished or suspended for acts having no relevance or bearing on the Institute, its name, or the good moral character of the individual.

8. The said acts of the officials of Louisiana Polytechnic Institute as described above constitutes an illegal expulsion from Louisiana Polytechnic Institute, and were in violation of the plaintiff's rights as guaranteed under the First Amendment of the United States Constitution and protected against improper state action by the Fourteenth Amendment to the United States Constitution; said acts pursuant to the statutes, laws and regulations of the State of Louisiana thereby deprived plaintiff of his right to due process of law as provided and protected by the Fourteenth Amendment.

9. Plaintiff has suffered and is threatened with serious and irreparable harm and injury by reason of the action of the defendants complained of herein. He has no plain, adequate or complete remedy at law. Any other remedy if such were available would be so attended with uncertainties and delays as to deny substantial relief, cause further irreparable injury, and occasion damage, vexation and inconvenience to both the plaintiff and the defendants.

WHEREFORE THE PLAINTIFF PRAYS THAT:

1. This Honorable Court grant an Ex parte, Temporary Restraining Order without notice, enjoining all defendants, their agents, servants, representatives, employees, successors in office and all persons in active concert and participation with them from interfering with the plaintiff's attendance at the defendant, Louisiana Polytechnic Institute by expelling, suspending or in any way disciplining him.

2. This Honorable Court issue a writ of Mandamus ordering all defendants, their agents, representatives and servants to forth with reinstate the plaintiff in Louisiana Polytechnic Institute and to accept his registration for the Fall Semester commencing in September, 1965 and thereafter until such time as the plaintiff has his degree.

3. That this Honorable Court issue an Order to Show Cause and hold a hearing why a preliminary injunction should not issue prohibiting the defendants, their agents, servants, employees, successors in office and all persons in active concert and participation with them from interfering with the plaintiff's attendance at the defendant, Louisiana Polytechnic Institute by expelling, suspending or in any way disciplining him.

4. That this Court issue an order to Defendants directing them to readmit Plaintiff to Louisiana Polytechnic Institute forthwith (or, in any event, at a time sufficiently prior to the commencement of registration for the upcoming term) and, further, at a time prior to said registration,

To permit him to complete his course work, administer to him his final examinations, and give him his grades and credits for the 1965 summer session, at the grades to which he would be entitled on the basis of the work performed prior to his suspension.

5. That this Court advance this complaint on the docket and order a speedy hearing thereof according to law and that upon such hearing the court enter a temporary injunction enjoining defendants and their agents and representatives from enforcing those state laws and regulations in effect for Louisiana Polytechnic Institute relied on in the letter of January 11, 1965 from Mabel May registrar of said institution.

6. That this Court upon a final hearing of this cause enter a permanent injunction enjoining defendants and their agents and representatives from enforcing those state laws and regulations in effect for Louisiana Polytechnic Institute relied on in the letter of January 11, 1965 from Mabel May, registrar of said institution.

7. That this Court upon a final hearing of this cause declare the rights of the parties, namely that the state statutes and school regulations in effect for Louisiana Polytech are unconstitutional on their faces and as applied in violation of the equal protection clause of the fourteenth amendment.

6. That this Court allow petitioners their costs and attorney fees and such other relief as may appear just and proper.

ROBERT F. COLLINS
NILS R. DOUGLAS
LOLIS E. ELIE
2211 ERYADES STREET
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523-5197

BY: _____

OF COUNSEL:

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA
BATON ROUGE DIVISION

JAMES POTTS,
Plaintiff,

vs.

JOHN J. McKEITHEN, et al,
Defendants.

CIVIL ACTION
NO. 3267

* *

TEMPORARY RESTRAINING ORDER

TO THE HONORABLE, THE JUDGES OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA,

WHEREAS in the above named cause it has been made to appear by the verified complaint filed herein on the_____day of _____,1965, presented to the Honorable _____ _____, Judge of the United States District Court for the Eastern District of Louisiana, that a restraining order preliminary to hearing upon motion for a preliminary injunction should issue without notice, because immediate and irreparable injury, loss and damage will result to the plaintiff before notice can be served and a hearing had thereon; and

WHEREAS the unlawful acts of defendants, their agents, employees, representatives and other persons in active concert with them have caused plaintiff to be deprived of his rights under the First and Fourteenth Amendments to the United States Constitution, and under the decisions of the United States Supreme Court,

WHEREAS notice and hearing before entering a temporary restraining order should not be required because plaintiff has no adequate remedy at law; Now, therefore, on motion of plaintiff,

IT IS ORDERED that defendants, their agents, representatives, employees, successors, and all persons in active concert with them be and the same are enjoined from:

1. Continuing to enforce or give effect directly or indirectly to the order or direction suspending plaintiff from Louisiana Polytechnic Institute;

2. Refusing to reinstate and register plaintiff immediately as a fully matriculated student at Louisiana Polytechnic Institute, commencing in September, 1965 with the same rights, privileges and immunities accorded to other students at the college;

3. Refusing to expunge any notation of the dismissal from the permanent school record of plaintiff;

4. Taking any disciplinary action of any kind against plaintiff because of bisexuality;

5. Preventing plaintiff from completing his course work and examinations for the summer session before the registration date of September 14, 1965, or, in the alternative, refusing to grant plaintiff credit for his course work performed during the 1965 summer session, at the grades to which he is entitled.

UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF LOUISIANA

BATON ROUGE DIVISION

JAMES POTTS,

PLAINTIFF,

CIVIL ACTION

3267

VS.

JOHN J. McKEITHEN, et al.,

Defendants

* *

ORDER TO SHOW CAUSE

UPON THE VERIFIED COMPLAINT HEREIN,

IT IS ORDERED that defendants show cause at the United States District Court for the Eastern District of Louisiana in the United States Courthouse, Room_____, at _____, Louisiana, on _____,1963, at _____o'clock, _____M., why the Preliminary Injunction herein prayed for should not immediately issue.

IT IS FURTHER ORDERED that copies of this order to show cause be served upon all parties hereto immediately, and that the United States Marshal endorse his return of the original hereof.

DATED:

_____

UNITED STATES DISTRICT JUDGE

VERIFICATION

I, LOLIS E. ELIE, of lawful age, first being duly sworn upon oath, depose and say:

That I am a member of the bar of Louisiana and of the U.S. District Court for the Eastern District of Louisiana;

That I am the duly authorized attorney for plaintiff herein authorized to prepare and verify the annexed complaint;

That I have read the annexed complaint and know the contents thereof;

That I know of my personal knowlege that all facts stated therein are supported by signed statements or are stated on information and belief;

That as to subject matter I believe the complaint to be true and;

That I sign the verification on behalf of the plaintiff, because the annexed complaint deals chiefly with matters of law and legal inference to be drawn from facts alleged and/or of which I as an attorney have more knowlege than the plaintiff.

LOLIS E. ELIE

SWORN TO AND SUBSCRIBED
BEFORE ME THIS DAY
OF AUGUST, 1968.

NOTARY PUBLIC

IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF LOUISIANA

NO._____

JAMES POTTS,

Plaintiff

vs.

GOVERNOR JOHN McKEITHEN, et al.,

Defendants

* * * * * * * *

MEMORANDUM BRIEF IN SUPPORT OF PLAINTIFF'S MOTION FOR INJUNCTIVE RELIEF

I. THE RELIEF REQUESTED SHOULD BE GRANTED

The State of Louisiana has, through its legislative and executive machineries, deprived appellant of his constitutional rights. Plaintiff was illegally arrested, and suspended at an inadequate hearing pursuant to an unconstitutional school board regulation.

A. Deprivation of Right to Free Speech

Plaintiff was arrested while peacefully picketing in lawful exercise of his First Amendment right to free speech. Thornhill v. Alabama, 310 U.S. 88. This right is protected from invasion by the States by the Fourteenth Amendment. Edwards v. South Carolina, 372 U.S. 229, 235.

The facts here bear a striking similarity to those in Edwards v. South Carolina, supra. Both cases involve picketing demonstrations protesting racial grievances. Both cases involve situations where there was no violence or threat of violence. Indeed plaintiff's case is the stronger. In Edwards the picketers were arrested after refusing to disperse as ordered by the police officers, whereas, plaintiff was arrested while he and his group were obeying police orders. Also see Cox v Louisiana, 379 U.S. 536. In Edwards the picketer's convictions were reversed in a decision

which pinpoints the illegality of the arrest in the instant case.

> The maintenance of the opportunity for free political discussion to the end that government may be responsive to the will of the people and that changes may be obtained by lawful means...is a fundamental principle of our constitutional system. Edwards supra at 238.

The provision of the State regulation providing for automatic suspension upon arrest and incarceration is an unconstitutional prior restraint on free speech. Picketing and other demonstrations are valuable and frequently used means of expression of the American Negro today. Arrest and incarceration are the all too frequent results of those expressions. Negro students are thus faced with the painful choice between the right to free speech and the right to an education. This choice is inconsistent with the fundamental principles of the constitution under which free speech and education are co-extensive, rather than mutually exclusive rights. The regulation is therefore unconstitutional

> "(A) function of free speech under our systems of government is to invite dispute. It may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger. Speech is often provocative and challenging. It may strike at prejudices and preconceptions and have profound unsettling affects as it presses for acceptance of an idea. That is why freedom of speech ...is... protected against censorship or punishment, unless shown likely to produce a clear and present danger of a serious substantive evil that rises far above public inconvenience, annoyance, or unrest... There is no room under our constitution for a more restrictive view. For the alternative would lead to standardization of ideas either by legislatures, courts, or dominant political or community groups." Terminello v. Chicago, 337 U.S. 1, 4-5. (Emphasis added)

B. Deprivation of Equal Protection of The Law

State machinery deprived plaintiff of his right to equal protection under the Fourteenth Amendment. First, the plaintiff, two white CORE workers, and the Reverend who had led the demonstration were the only persons arrested from the group of 350 demonstrators that day. Inside the jailhouse plaintiff was physically molested and orally abused. Frequent police references of his being "an educated nigger" clearly underline the fact that he had been arrested because he was the first Negro to integrate and attend Louisiana Polytechnic Institute.

Second, plaintiff was suspended pursuant to a regulation which had been adopted with discriminatory intent. The statement of policy contained in the regulation was made in December 1961 at a time when "sit in" and other demonstrations were occurring to protest racial segregation, a situation which had caused the arrests and prosecution of many students at Southern colleges and which, as the Board knew, would occasion more. As it appears in the minutes, the regulation is sandwiched in between 1). a resolution presented on behalf of the Citizens for the Preservation of Educational Standards condemning the encroachment of "an all-powerful Central Government" and tactice of "defiance of established law and order" and calling for the expulsion from tax-supported institutions of persons participating in activities violative of local and state laws and 2). a directive to presidents of state institutions to prevent students from taking part in demonstrations "not sanctioned by the institution" (Bulletin No. 965, Official Proceedings of State Board of Education, pp. 10--12). The discriminatory intent is further evidenced by the Baton Rouge State Times article of December 16, 1965, which cites the adoption of the regulation and is entitled " Board of Education Issues Warning to Negro Students, Courts Ban Demonstrations." Also see New Orleans Times-Picayune, December 17, 1961, Section 1, p. 33, Column 2.

This Honorable Court has the "unshirkable duty of inquiring into (the) legislative purpose" for which this regulation was adopted. United States v. Louisiana, 225 F.S. 353, 359 (5th Cir. 1963), Aff. 380 U.S. 145.

Third, the regulation was unconsitutionally applied to plaintiff's case. It is obvious that the circumstances of plaintiff's arrest reflect no personal misconduct sufficient to infringe on the school's interest or to warrant suspension. Yet the suspension hearing was a more formality that was prejudged, and characterized by irrelevant and prejudicial questions such as: "What are you Nigras trying to do"? "This discriminatory attitude is not surprising in view of the circumstances surrounding plaintiff's entrance into defendant's institute. In response to his

initial application the defendant replied in part:

> Although your application meet all requirements for admission, because of the laws of the State of Louisiana and regulations in effect for Louisiana Tech, admission must be denied pending receipt of a court order setting aside these laws and regulations. (emphasis added) See Record, James Potts vs. Governor John McKeithen, et als, Civil Action 3128, U.S. D.S. Eastern District of Louisiana.

A regulation which is unequally applied violates the Fourteenth Amendment, Yick Wo v. Hopkins, 118 U.S. 356, 373-74 (1886).

In short, this regulation was promulgated for the illegal purpose of preventing Negro students from exercising their constitutional rights of free speech and assembly. Plaintiff's suspention fulfulled that purpose. The discriminatory arrest, state regulation and decision by the state Institute Officials constituted state action which combined to produce that suspension. "A State acts by its legislative, its executive or its judicial authorities. It can act in no other way." Ex Parte Virginia, 100 U.S. 339, 347 (1879). The discriminatory police arrest suffices in itself:

> If city policemen, with the color of office which their uniform, badge, display of authority, and available arms reflects, undertake as policemen to subject persons to treatment which denies them a constitutionally protected right, it is state action. Baldwin v. Morgan, 287 F. 2d 750, 757 (5th Cir. 1961).

The suspension resulting from that arrest deprived plaintiff of his right to equal protection.

C. Deprivation of Due Process

The importance of an education cannot be overemphasized in today's society where a college degree is often a Sine qua non for entrance into a variety of occupations. Any contention that the plaintiff's interest in remaining at the state school of his choice is a mere privilege and not a constitutional right was emphatically rejected by the court in Dixon v. Alabama State Board of Education, 200 F. Supp. 174, 178 (M. D. Tenn. 1961) As the Fifth Circuit Court of Appeals said in the Dixon case:

> "The precise nature of the private interest involved in this case is the right to remain at a public institution of higher learning in which the plaintiffs

were students in good standing. It requires no argument to demonstrate that education is vital and, indeed, basic to civilized society. Without sufficient education the plaintiffs would not be able to earn an adequate livelihood, to enjoy life to the fullest, or to fulfill as completely as possible the duties and responsibilities of good citizens.

...

It is most unlikely that a public college would accept a student expelled from another public college of the same state. Indeed, expulsion may well prejudice the student in completing his education at any other institution. Surely, no one can question that the right to remain at the college in which the plaintiffs were students in good standing is an interest of extremely great value." (at p. 157) (emphasis added)

In light of the importance attached to higher education, it is not surprising that the court in an early common law decision, King v. Chancellor of the University of Cambridge, 2 Ld Raym 1334, 1338 92 Eng. Rep. 370, 378 (K. B. 1732). held that deprivation of an academic degree could not be done without adherance to the principles of natural justice. Similarly, the federal courts have stressed that

"...The authorities uniformly recognize that the governmental power in respect to matters of student discipline in public schools is not unlimited and that disciplinary rules must not only be fair and reasonable but that they must be applied in a fair and reasonable manner." Knight v. State Board of Education op. cit., at p. 179 citing the Dixon case at p. 157.

The court in the Dixon case elaborated standards for the notice and hearing requirements of procedural due process with respect to the expulsion of students from a state college or university. Inter alia, they suggested that the notice contain a statement of the specific charges and grounds which, if proven, would justify expulsion" and that the hearing should enable the authorities to hear both sides in detail. In addition, they recommended that the student be permitted to present his case with, if necessary, the use of oral testimony and /or written affidavits. See Dixon op. cit., at pp. 158-9.

The above were characterized by the court as "rudimentary elements of fair play" and it is clear on the record that the actions of the university officials in this case have not satisfied the procedural due process requirements.

The plaintiff received only one days notice of a meeting of the disciplinary committee and was advised by defendant Lewis, himself a board member, that he would be "formally dismissed" from the Institute at the meeting. It is obvious, therefore, that the board merely satisfied a suspension already predetermined. Indeed, plaintiff's attorneys were refused permission to attend the hearing and advised that the suspension was automatic. At the meeting itself, inquiry into plaintiff's civil rights activities, the civil rights movement, and derogatory comments of his race were irrelevant and prejudicial. Thus the record shows that the board meeting was a sham procedure, a mere formality in which one judge, by his own admission, had predetermined the merits of the issue. In addition, the Board's requirement that plaintiff immediately sign a notice of appeal was unreasonable in the light of its own stated procedures. In any event plaintiff was told at the time that an appeal would be futile.

Thus, the actions of the defendants prior to, during and subsequent to the committee meeting of July 30, 1965 deprived the plaintiff of a full and fair hearing in violation of his due process rights guaranteed by the Constitution.

Moreover, the regulation is so broad and arbitrary as to apply alike to all arrests, be they for minor traffic infractions or for heinous crimes, and is, therefore, unconstitutional on its face. In Knight v. State Board of Education, 200 F. Supp. 174, 179 (1961) the court dealt with a regulation of the Tennessee Commissioners of Education requiring the dismissal of any student "who shall. in the future, be arrested and convicted on charges involving personal misconduct." The court held, inter alia, that to apply the regulation to all convictions was unreasonable for "countless convictions for violations of the criminal laws...do not necessarily reflect seriously upon the person so convicted." The situation is even more arbitrary and unreasonable in the present case where the regulation applies, on its face, merely to arrest and incarceration. The court in the Knight case laid great

emphasis on the need for evidence of convictions "which reflected dishonor and discredit upon the institution" (at p. 180) Clearly it would be absurd to suggest that plaintiff's conduct in this case falls within the above category.

II. THE NEED FOR INJUNCTIVE RELIEF

Plaintiff has and will continue to suffer immediate and irreparable harm if the relief requested is not granted. Suspended just prior to the completion of the summer session he has already lost nine credit hours. Registration for this fall semester begins on September 13, and classes begin on September 15. Unless this suspension is reversed immediately plaintiff is in danger of losing another semester's work. As this Court said in Woods v. Wright, 334 F. 2d 369, 374-75:

> "We are fully aware of the reluctance with which Federal Courts should contemplate the use of the injunctive power to interfere with the conduct of state officers. But when there is a deprivation of a constitutionally guaranteed right and the duty to exercise the power cannot be avoided. See Dixon v. Alabama State Board of Education, 5th Cir. 1961, 294 F. 2d 150, cert. den. 368 U.S. 930, 82 S. Ct. 368, 7 L. Ed. 2d 193. Where there is a clear and imminent threat of an irreparable injury amounting to manifest oppression it is the duty of the court to protect against the loss of the asserted right...."

WHEREFORE, plaintiff prays that this Honorable Court grants his motion for injunctive relief requiring that plaintiff be immediately reinstated at Louisiana Polytechnic Institute, that provisions be made enabling him a fair opportunity to complete his summer courses, and requiring such other and further relief as this Honorable Court deems just, equitable and proper. Plaintiff further prays that this Honorable Court act on this motion at its earliest convenience, to allow the effective implementation of the Court's injunction.

Respectfully submitted,

ROBERT F. COLLINS

NILS R. DOUGLAS

LOLIS E. ELIE

ATTORNEYS FOR PLAINTIFF

2211 DRYADES STREET

NEW ORLEANS, LOUISIANA

BY: _____

OF COUNSEL:

HARRIS DAVID

2211 DRYADES STREET

NEW ORLEANS, LOUISIANA

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

BATON ROUGE DIVISION

JAMES EARL POTTS by his father and next friend, ALVIN POTTS,

Plaintiff

VERSUS

JOHN J. McKEITHEN, Governor of the State of Louisiana, THE LOUISIANA STATE BOARD OF EDUCATION, WILLIAM J. DODD, as Superintendent of Public Education, as Executive Secretary of the Louisiana State Board of Education, and also as Chairman of the Executive Committee of Louisiana Polytechnic Institute, F. JAY TAYLOR, President of Louisiana Polytechnic Institute, LOUISIANA POLYTECHNIC INSTITUTE, W. E. WHETSTONE, as President of the State Board of Education,

Defendants.

CIVIL ACTION

NUMBER 3267

PRELIMINARY INJUNCTION

This matter came on for hearing this day on plaintiff's application for the issuance of a preliminary injunction. After hearing the evidence adduced herein, and for the reasons orally stated in open court at the conclusion of the hearing:

IT IS ORDERED that plaintiff's request for the issuance of a preliminary injunction is GRANTED, and in accordance therewith respondents, and each of them, and their agents, servants, employees, successors in office, and all who are, or may be, in concert with them who shall receive notice of this order are hereby restrained and enjoined from refusing to allow plaintiff, James Earl Potts, to continue his studies as a student at Louisiana Polytechnic Institute at Ruston, Louisiana, pending a final legal determination of the criminal charges pending against him and growing out of

Notice waived

the incident which occurred during and after certain civil rights demonstrations in which he participated in Jonesboro, Louisiana, on July 25, 1965.

This Court will retain jurisdiction over this matter for the purpose of trial on its merits, if the need arises therefor, and for the issuance of such further orders herein as may be necessary and proper.

Baton Rouge, Louisiana, September 17, 1965.

E. Gordon West

UNITED STATES DISTRICT JUDGE

Potts

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

BATON ROUGE DIVISION

JAMES POTTS,

Plaintiff

VERSUS

JOHN J. McKEITHEN, ET AL,

Defendants

CIVIL ACTION

NUMBER 3267

ORDER

IT IS ORDERED that the Order to Show Cause issued herein on August 24, 1965, setting a hearing on plaintiff's request for preliminary injunction for September 8, 1965, at 10:00 a.m. in New Orleans, Louisiana, be, and it is hereby AMENDED to read as follows:

IT IS ORDERED that defendants show cause at the United States Courthouse for the Eastern District of Louisiana at Baton Rouge, Louisiana, on September 10, 1965, at 2:00 p.m., why the preliminary injunction herein prayed for should not immediately issue.

IT IS FURTHER ORDERED that service of this amendment to the order previously issued herein upon attorneys for all parties by United States mail shall be deemed good and sufficient.

Baton Rouge, Louisiana, September 3, 1965.

E. Gordon West

UNITED STATES DISTRICT JUDGE

Copies mailed 9-3-65 B

FEE
PROCESS
X CHARGE
INDEX
ORDER
HEARING
DOCUMENT NO.

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

BATON ROUGE DIVISION

JAMES POTTS,

Plaintiff

VERSUS

JOHN J. McKEITHEN, ET AL

Defendants

CIVIL ACTION

NUMBER 3267

ORDER

IT IS ORDERED that the hearing on plaintiff's request for preliminary injunction, previously set for September 10, 1965, at 2:00 p.m., be, and it is hereby set for FRIDAY, SEPTEMBER 17, 1965, at 10:00 a.m., and defendants are ordered to show cause at the United States District Court for the Eastern District of Louisiana at Baton Rouge, Louisiana, on Friday, September 17, 1965, at 10:00 a.m. why the preliminary injunction herein prayed for should not immediately issue.

IT IS FURTHER ORDERED that service of this order upon attorneys for all parties by United States mail shall be deemed good and sufficient.

Baton Rouge, Louisiana, September 13, 1965.

(SIGNED) E. GORDON WEST

UNITED STATES DISTRICT JUDGE

U. S. DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
FILED
JAN 20 1965
ALTON L. CURTIS, CLERK
BY S/ T. W. Hampson
DEPUTY

UNITED STATES DISTRICT COURT

EASTERN DISTRICT

BATON ROUGE DIVISION

CIVIL ACTION

NO. 10803

JAMES EARL POTTS by his father and next friend, ALVIN POTTS and all Negro students and parents similarly situated,

Plaintiffs

vs.

JOHN J. McKEITHEN, Governor of the State of Louisiana, The Louisiana State Board of Education, WILLIAM J. DODD, as Superintendent of Public Education, as Executive Secretary of The Louisiana State Board of Education, and also as Chairman, of the Executive Committee of Louisiana Polytechnic Institute, MABEL MAY as Registrar of Louisiana Polytechnic Institute and JOHN DOE and JOSEPH DOE members of the Executive Committee of Louisiana Polytechnic Institute, F. JAY TAYLOR, President of Louisiana Polytechnic Institute,

Defendants

* * * * * * * * * * * *

1. Plaintiff, James Earl Potts is a citizen of the United States and the State of Louisiana. He is a Negro, and infant, eighteen years of age, represented herein by his father and next friend Alvin Potts.

2. The remainder of the plaintiffs are citizens of the United States and State of Louisiana, Negroes, infants and adults, similarly situated to James Earl Potts and constitute a class so numerous as to make it impracticable to bring them all before the court. The rights sought to be enforced for them are several and there is a common question of law and fact affecting the several rights and a common relief is sought.

3. The Defendants are:

a.) John J. McKeithen, The duly elected Governor of the State of Louisiana.

b.) The Louisiana State Board of Education a body politic and corporate having its domicile in the City of Baton Rouge, Parish of East Baton Rouge. Said Board is authorized by L.S.A-R.S. 17:2 to sue and be sued in all matters relating to public schools except cases within the jurisdiction of the parish school board.

c.) William J. Dodd is the duly elected Superintendent of Public Education and also the executive secretary of the State Board of Education. William J. Dodd, Superintendent of Education is by authority of L.S.A.-R.S. 17:11 ex-officio chairman of the executive committee of Louisiana Polytechnic Institute.

d.) Mabel May is registrar of Louisiana Polytechnic Institute.

e.) F. Jay Taylor is president of Louisiana Polytechnic Institute.

f.) John Doe and Joseph Doe are the two remaining members of the executive committee of Louisiana Polytechnic Institute as authorized by L.S.A.-R.S. 17:11. These persons names and addresses are presently unknown.

4. Jurisdiction is based on:

(a) Section 1 of the fourteenth amendment:

> "...No state shall...deny to any person within its jurisdiction the equal protection of the laws...."

(b) 28 U.S.C. 1331 which provides original jurisdiction in Civil Actions in controversies over $10,000.00.

(c) 28 U.S.C. 1343 (3) which provides original jurisdiction in civil actions for state deprivation of rights, privileges or immunities granted by the U. S. Constitution or U. S. laws.

(d) 28 U.S.C. 2201 which provides for declaratory judgments

(e) 28 U.S.C. 2202 which provides for further relief based on declaratory judgments.

(f) 28 U.S.C. 2281 which provides against interlocutory or permanent injunctions based on the unconstitutionality of statutes except by a three judge court.

(g) 28 U.S.C. 2284 which provides for convening of a three judge court.

(h) 42 U.S.C. 1981 which provides Federal Statutory guarantee to equal protection of the laws.

(i) 42 U.S.C. 1983 which provides for actions against persons who under color of law subject citizens to deprivations of rights, privileges or immunities granted by the United States Constitution or laws.

(j) Rule 23 (A) (3), Federal Rules of Civil Procedure.

(k) Rule 65 (B), Federal Rules of Civil Procedure.

(l) Rule 17 (C) Federal Rules of Civil Procedure.

(m) Rule 57, Federal Rules of Civil Procedure.

5. This is a class action praying for:

(a) Convening of a Three Judge District Court.

(b) Issuance of an ex parte restraining order for the reasons set forth in the affidavit supporting the prayer for a temporary restraining order.

(c) Issuance of preliminary and final injunctions against all defendants enjoining them from unconstitutionally preventing qualified Negroes from attending school at Louisiana Polytechnic Institute.

(d) Issuance of a Mandamus ordering all defendants to immediately enroll plaintiff, James Earl Potts and all other Negroes similarly situated to Louisiana Polytechnic Institute.

(e) Issuance of a declaratory judgment declaring unconstitutional on their face and as applied all state laws, regulations of the State Board of Education and regulations of the Executive Committee of Louisiana Polytechnic Institute which are relied upon by Louisiana Polytechnic Institute as grounds for refusing admission to James Earl Potts and all other Negroes similarly situated.

(f) Plaintiffs and all other Negro citizens of the State of Louisiana are threatened with irreparable injury by reason of the conditions herein complained of and as set forth in the affidavit supporting the prayer for a temporary restraining order. They have no other plain, adequate or complete remedy to redress these wrongs other than by this suit. Any other remedy would involve a multiplicity of suits and cause further irreparable injury, damage, expenses and inconveniences to plaintiff and others similarly situated. Plaintiff fairly and adequately represents the interest of the class.

6. Plaintiff, James Earl Potts, is an 18 year old Negro citizen of the United States, State of Louisiana and Parish of Jackson. He is presently a Freshman student at Grambling College, Grambling, Louisiana. On or about November 1, 1964 he applied for admission to Louisiana Polytechnic Institute at Ruston, Louisiana. Subsequent to his submitting documents complying with the admission requirements of the school, plaintiff received a letter from the office of the Registrar of Louisiana Polytechnic Institute. The letter said:

> "...Your application for admission to Louisiana Tech during the spring semester 1964-65 has been received and reviewed. Although your application meets all requirements for admission, because of the laws of the State of Louisiana and regulations in effect for Louisiana Tech, admission must be denied pending receipt of a court order setting aside these laws and regulations...."

The original of this letter is attached hereto and made a part hereof as if copied in extenso. Other facts leading to the above mentioned letter are outlined in the affidavit by James Earl Potts which affidavit is also attached hereto and made a part hereof.

7. As set out in L.S.A.-R.S. 17:10, Louisiana Polytechnic Institute is a public institution coming within the administration of the Louisiana State Board of Education.

8. As set out in L.S.A.-R.S. 17:11 the management and control of Louisiana Polytechnic Institute is vested in an executive committee of two in addition to the State Superintendent of Education who is ex officio a member and chairman. L.S.A.-R.S. 17:11 also sets out:

> "...the executive committees shall perform such duties as may be required of them by the Louisiana State Board of education...."

9. Plaintiff has no way of knowing specifically which state laws and school regulations the registrar of Louisiana Polytechnic Institute is relying upon in their denial of admission to James Earl Potts.

10. Plaintiff believes and alleges that the state statut relied on are L.S.A.-R.S. 17:349.4; 17:394.1; 17:394. 395.1; 17:395.2; 17:395.3; 17:395.4; 17:395.5 and 17:1 These statutes are unconstitutional on their face and a applied.

11. Plaintiff alleges that the denial of admission by Louisiana Polytechnic Institute to James Earl Potts on the grounds stated in their letter of January 11, 1965 is a deprivation of rights, privileges and immunities guaranteed under the equal protection clause of the fourteenth amendment to the United States Constitution.

12. Plaintiff alleges that to be forced by state law to go to a segregated school not of his choice denies him the due process of law guaranteed by the Fourteenth Amendment to the U. S. Constitution.

13. Plaintiff further alleges that the action of Louisiana Polytechnic Institute in refusing him admission deprives him of rights guaranteed him under 42 U. S. C. 1981 and 42 U. S. C. 1983.

14. Notwithstanding the decision of The United States Supreme Court in Brown v. Board of Education in 1954 plaintiff has been put to the embarrassment, inconvenience, expense and harrassment of retaining counsel to secure his admission to said school.

15. Any regulation in effect for Louisiana Polytechnic Institute which prohibits some persons who meet all requirements for admission from entrance into said school yet permits others entrance violates the U. S. Constitution and laws; particularly the equal protection of the laws clause of the Fourteenth Amendment.

WHEREFORE, Plaintiffs pray that:

1. This Honorable Court grant an ex parte temporary restraining order without notice enjoining all defendants,

their agents, representatives, employees, successors and all persons in active concert and participation with them from enforcing those state laws and regulations in effect for Louisiana Polytechnic Institute relied on in the letter of January 11, 1965 from Mabel May, registrar of said institution.

2. This Honorable court issue a writ of Mandamus ordering all defendants, their agents and representatives to forthwith enroll plaintiff, James Earl Potts, in Louisiana Polytechnic Institute, and to accept his registration during the normal registration period on February 2-3, 1965.

3. That this court issue an ex parte temporary restraining order without notice, enjoining all defendants, their agents, representatives, employees, successors and all persons in active concert with them from denying Plaintiff and all Negroes similarly situated admission to Louisiana Polytechnic Institute solely because of their race.

4. This Honorable Court convene a three judge court as provided by 28 U.S.C. 2284.

5. This Honorable Court advance this complaint on the docket and order a speedy hearing thereof according to law and that upon such hearing the court enter a temporary injunction enjoining defendants and their agents and representatives from enforcing those state laws and regulations in effect for Louisiana Polytechnic Institute relied on in the letter of January 11, 1965 from Mabel May registrar of said institution.

6. This Honorable Court upon a final hearing of this cause enter a permanent injunction enjoining defendants and their agents and representatives from enforcing those state laws and regulations in effect for Louisiana

Polytechnic Institute relied on in the letter of January 11, 1965 from Mabel May, registrar of said institution.

7. This Honorable Court upon a final hearing of this cause declare the rights of the parties, namely that the state statutes and school regulations in effect for Louisiana Polytech are unconstitutional on their face and as applied in violation of the equal protection clause of the fourteenth amendment.

8. This Honorable Court allow petitioners their costs and attorney fees and such other relief as may appear just and proper.

ROBERT F. COLLINS
NILS R. DOUGLAS
LOLIS E. ELIE
2211 DRYADES STREET
NEW ORLEANS, LOUISIANA
523-5197

BY: s/ Nils R. Douglas

STATE OF LOUISIANA
PARISH OF ORLEANS

BEFORE ME, the undersigned authority personally came and appeared:

NILS R. DOUGLAS

who after first being duly sworn did depose and say that he is one of the attorneys for James Earl Potts; that he prepared the pleadings in this matter and that a copy of the same has been served on the Hon. Jack P. F. Gremillion, Attorney General for the State of Louisiana by depositing same in the United States mail addressed to him at the State Capitol, Baton Rouge, Louisiana postage prepaid.

s/ Nils R. Douglas
NILS R. DOUGLAS

SWORN TO AND SUBSCRIBED
BEFORE ME THIS 18 DAY OF
JANUARY, 1965.

s/ Lolis E. Elie
NOTARY PUBLIC

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
This is to certify that the above and foregoing contained on this and preceding [illegible] is a true and correct copy of the original.

January 20 1965

ALTON L. CURTIS, CLERK
BY Donna Jean Jones
Deputy Clerk

Potts file

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
BATON ROUGE DIVISION

U. S. DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
FILED
JAN 22 1965
A. DALLAM O'BRIEN, JR.
CLERK

JAMES EARL POTTS by his father
and next friend, ALVIN POTTS
and all Negro students and parents
similarly situated,

Plaintiffs

VERSUS

CIVIL ACTION

NUMBER 3128

JOHN J. McKEITHEN, Governor of the
State of Louisiana, the Louisiana State
Board of Education, WILLIAM J. DODD, as Superintendent of Public Education, as Executive Secretary of the Louisiana State Board of Education, and also as Chairman, of the Executive Committee of Louisiana Polytechnic Institute, MABLE MAY as Registrar of Louisiana Polytechnic Institute and JOHN DOE and JOSEPH DOE members of the Executive Committee of Louisiana Polytechnic Institute, F. J. TAYLOR, President of Louisiana Polytechnic Institute,

Defendants

ORDER TO SHOW CAUSE

It IS ORDERED that respondents, JOHN J. McKEITHEN, Governor of the State of Louisiana, the Louisiana State Board of Education, WILLIAM J. DODD, as Superintendent of Public Education, as Executive Secretary of the Louisiana State Board of Education, and also as Chairman, of the Executive Committee of Louisiana Polytechnic Institute, MABLE MAY as Registrar of Louisiana Polytechnic Institute and JOHN DOE and JOSEPH DOE members of the Executive Committee of Louisiana Polytechnic Institute, F. JAY TAYLOR, President of Louisiana Polytechnic Institute, show cause, if any they have, on Monday, February 1, 1965, at 10:00 o'clock a.m., at the Federal Court Building in Baton Rouge, Louisiana, why the temporary injunction herein prayed for should not immediately issue.

IT IS FURTHER ORDERED that copies of this order to show cause be served upon all parties hereto immediately, and according to law.

Baton Rouge, Louisiana, January 22, 1965.

E. Gordon West
UNITED STATES DISTRICT JUDGE

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ORDER
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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

BATON ROUGE DIVISION

U. S. DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
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FEB 1 1965
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CLERK

JAMES EARL POTTS by his father and next friend, ALVIN POTTS and all Negro students and parents similarly situated,

Plaintiffs

VERSUS

JOHN J. McKEITHEN, Governor of the State of Louisiana, the Louisiana State Board of Education, WILLIAM J. DODD, as Superintendent of Public Education, as Executive Secretary of the Louisiana State Board of Education, and also as Chairman of the Executive Committee of Louisiana Polytechnic Institute, MABLE MAY as Registrar of Louisiana Polytechnic Institute and JOHN DOE and JOSEPH DOE members of the Executive Committee of Louisiana Polytechnic Institute, F. JAY TAYLOR, President of Louisiana Polytechnic Institute,

Defendants

CIVIL ACTION

NUMBER 3128

JUDGMENT AND ORDER

This matter came on for hearing on February 1, 1965, on plaintiffs' application for the issuance of a permanent injunction, restraining and enjoining defendants from refusing to admit the plaintiff, James Earl Potts, and others similarly situated, to Louisiana Polytechnic Institute, as students, commencing with the semester beginning on or about February 2, 1965, and thereafter. Defendants were represented in Court by counsel, who readily admitted all of plaintiffs' allegations and offered no defense whatsoever. The Court being of the opinion that the law is clearly in favor of plaintiffs:

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IT IS THEREFORE ORDERED that the defendants, John J. McKeithen, Governor of the State of Louisiana, Louisiana State Board of Education, William J. Dodd, as Superintendent of Education and as Ex-Officio Chairman of the Executive Committee of the Louisiana Polytechnic Institute, Mabel May, Registrar of Louisiana Polytechnic Institute, F. Jay Taylor, President of Louisiana Polytechnic Institute, and their agents, servants, employees, successors in office, and all who are or may be in concert with them who shall receive notice of this order be, and they are hereby restrained and enjoined from refusing to admit the plaintiff, James Earl Potts, and others similarly situated, to Louisiana Polytechnic Institute, at Ruston, Louisiana, beginning with the school term commencing on or about February 2, 1965, on exactly the same terms and conditions that are applied to white applicants to the college, and from making any distinction based upon race or color with respect to plaintiff and others similarly situated in admission to or continuance in Louisiana Polytechnic Institute beginning with the February term of 1965 and thereafter.

This Court retains jurisdiction over this matter for the issuance of such further orders as may from time to time be appropriate and necessary.

Baton Rouge, Louisiana, February 1, 1965.

E. Gordon West

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF LOUISIANA
BATON ROUGE DIVISION

MINUTE ENTRY:
September 17, 1965
WEST, J.

JAMES EARL POTTS by his father
and next friend, ALVIN POTTS

versus

JOHN J. McKEITHEN, Governor of
the State of Louisiana, ET AL

CIVIL ACTION

NO. 3267

This cause came on for hearing this day on an order to show cause why a preliminary injunction should not issue.

PRESENT: Harry David, Esq.
Robert F. Collins, Esq.
Attorneys for plaintiff

William P. Schuler, Esq.
Attorney for defendants

Defendants file documents in response to subpoena duces tecum.

On plaintiff's motion, witnesses are called, instructed by the Court, and segregated.

James Earl Potts, the Reverend Sanders Thomas, and Annie P. Johnson are called, duly sworn, and testify for plaintiff.

Plaintiff rests.

S. K. Lewis is called, duly sworn, and testifies for defendant.

The Court orders plaintiff's application for a preliminary injunction to be granted, pending the outcome of criminal charges against plaintiff in the State Court.

****

Harry David, Esq.
Robert F. Collins, Esq.
Nils R. Douglas, Esq.
Lolis E. Elie, Esq.
Murphy W. Bell, Esq.
Carl Rachlin, Esq.
Frank Plaut, Esq.

William P. Schuler, Esq.

DOCUMENT NO.

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RICHARD HALEY

2209 DRYADES STREET

NEW ORLEANS, LOUISIANA

Polls file

January 13, 1965

2

Mr. Anthony J. Celebrezze
Secretary of Health, Education
and Welfare
Washington, D. C.

Dear Mr. Celebrezze:

I am writing on behalf of Mr. James Potts, a student at the Negro college of Grambling in Louisiana. Mr. Potts wishes to transfer to Louisiana Polytechnic Institute in Ruston, Louisiana to begin study this semester which begins in February. Louisiana Polytechnic has an all white student body and has never been integrated. We believe it is a "recipient" of federal funds allocated by your department.

Because the facts connected with Mr. Potts' efforts to transfer smack strongly of racial discrimination, and in view of your recent directive, effective January 4, 1965, I wish to register the following complaint.

The facts are as follows. Upon this application the registrar of Louisiana Polytechnic Institute gave Mr. Potts a set of papers to be filled out by the local school board superintendent in Jonesboro, Louisiana. The superintendent stated that one of the forms was obsolete and refused to sign it. Louisiana Polytechnic, however, would not admit Mr. Potts unless this particular form was signed. Our inquiries to date have disclosed that this form is obsolete, having been invalidated in the federal courts.

On January 12, 1965 Mr. Potts received a letter from Louisiana Polytechnic which stated that Mr. Potts was qualified for admission but that it was against the policy of the school to admit him unless forced to do so by a court order.

We therefore urge you, or the "responsible Department official," to conduct a prompt investigation of this matter pursuant to Title 45 (A) section 80.7 (c) of your agency's rules, and to take all appropriate steps, including the withdrawal or suspension of federal assistance, to eliminate racial discrimination at Louisiana Polytechnic Institute.

I wish to emphasize that the urgency of this matter is due to the upcoming commencement of the second semester. It goes without saying that the loss of a half year's study represents a serious setback in time and progress in the achievement of one's educational objectives.

I would appreciate your sending pertinent correspondence to our Attorneys, Collins, Douglas and Elie, who are located at 2211 Dryades Street, New Orleans, Louisiana

Respectfully yours,

RICHARD HALEY
CORE SOUTHERN DIRECTOR

RH/vmg

COLLINS, DOUGLAS & ELIE
ATTORNEYS & COUNSELLORS AT LAW
201 DOUGLASS LIFE INSURANCE BUILDING
2211 DRYADES STREET
NEW ORLEANS, LOUISIANA 70113

ROBERT F. COLLINS
NILS R. DOUGLAS
LOLIS E. ELIE

TELEPHONE
523-5197

JAN 18 1965

Pub

January 15, 1965

Mr. Carl Rachlin
38 Park Row
New York 38, New York

RE: JAMES POTTS

Dear Carl:

On yesterday James Potts came to the office to discuss his appreciation for admission to Louisiana Polytechnic Institute at Ruston, Louisiana; I am enclosing a copy of the letter he received from the registrar of the Institute.

On the surface it appears that we would have no trouble getting James admitted, but it turns out that he is only eighteen (18) years old, and that his father and mother are extrajudicially separated and they are both living in Jonesboro, the point here is that his father, who has been to the State Penititiary, has to bring the suit. I instructed James to bring his father in on Saturday, January 16, 1964, if his father comes in we would be prepared to file suit in a couple of days.

We would appreciate any opinion from you as to whether we can bring a class action on behalf of Negroes without first having, for lack of a better word, a bona fide plaintiff.

Additionally, we requested Dick Haley to direct a letter to H. E. W., a copy of which is enclosed.

Let me repeat, we welcome any suggestions you have on this matter; but please take into consideration the fact that we would like to get James in school by February 2, 1965.

Permit me to thank you for your efforts in getting C. O. R. E. Scholarship and Defense Fund to send us their check for $1,028.79, this as stated in their letter to us, was our $628.79 out of pocket expenses together with our retainer of $400.00 for January. Please note that the retainer for January was not a part of our last state-

Mr. Douglas
Run by Haley
We need
Thank you very
clearly
can!

COLLINS, DOUGLAS & ELIE
ATTORNEYS & COUNSELLORS AT LAW
201 DOUGLASS LIFE INSURANCE BUILDING
2211 DRYADES STREET
NEW ORLEANS, LOUISIANA 70113

ROBERT F. COLLINS
NILS R. DOUGLAS
LOLIS E. ELIE

TELEPHONE
523-5197

ment to you, this means there is still $3,200.00 due us from our December statement. Woule you please let me know whether we should look to S. D. F. or C. O. R. E. for payments.

Looking forward to our meeting next month.

Personal regard,

COLLINS, DOUGLAS, and ELIE

BY: L. E. Elie/s

LEE:BR
Enclosure

LOUISIANA POLYTECHNIC INSTITUTE

Office of The Registrar

RUSTON, LOUISIANA

January 11, 1965

Mr. James Earl Potts
Route 1, Box 63
Quitman, Louisiana

Dear Mr. Potts:

Your application for admission to Louisiana Tech during the spring semester 1964-65 has been received and reviewed. Although your application meets all requirements for admission, because of the laws of the State of Louisiana and regulations in effect for Louisiana Tech, admission must be denied pending receipt of a court order setting aside these laws and regulations.

Sincerely,

Mabel May
Registrar

MM:lm

cc: Dr. F. Jay Taylor

C. Rachlin

CORE SEDF
Rec'd
8/11/65

MEMO

To: Nils R. Douglas
From: Harris David
Re: State of Potts case

Potts was suspended from school after his arrest for picketing. The length of his suspension was conditioned upon final decision of the court case. There appears to be an administrative procedure wherein the school requires three or four hearings on the suspension. At least one and perhaps two hearings have been held. At the first hearing the school authorities told Potts that he was suspended and that they had no discretion in the matter. He was told after the first hearing by one of the school authorities, "Don't get your hopes up. The same people will be at the next hearing." It is the impression of Attorney Mack Farmer, Shreveport LCDC, that these hearings are merely diliatory practices, but that they might be a necessary step under the exhaustion of administrative remedies principle.

Potts has missed his examinations and credits for the summer session. His suspension is applicable to the fall session which begins in early September, probably September 1st. His case arising out of arrest has been removed to the Federal Court. He is out on $2,000 bond. Recommended procedures: (1) Enjoin the school authorities from prohibiting Potts' matriculation this fall. (2) Seek contempt action against the school authorities before the judge who currently is handling the case. It is rumored that Attorney Amicer, in the McCoy case, a similar action, got an order from Judge Christenberry allowing the plaintiff to attend school This information was received from Attorney Mack Farmer who is not precisely clear on a number of details.

August 16, 1965

Harris David, Esq.
c/o Collins, Douglas & Elie, Esqs.
2211 Dryades Street
New Orleans, Louisiana

Dear Harris:

I have your note to Nils concerning James Potts. Bob Collins and I discussed this almost two weeks ago in New Orleans. It was my recommendation at that time that a declaratory judgment proceeding be instituted to have the administrative regulation under which Potts was suspended declared in violation of the Fourteenth Amendment, as takine property without due process of law. Bob repeated his understanding of the regulation which sounded unconstitutional at the time. In this declaratory judgment proceeding you can, of course, ask for an order to reinstate Potts.

If there is anything we can dor for you up here on this matter, please let me know immediately.

With kiniest regards to your wife,

Sincerely,

CARL RACHLIN
General Counsel

CR/cs

cc: Collins, Douglas & Elie, Esqs.
Malcom Farmer, Esq.
Marvin Rich

September 27, 1965

Collins, Douglas & Elie, Esqs.
2211 Dryades Street
New Orleans, Louisiana

Re: Potts

Dear Bob, Nils, & Lolis:

I hope your housing is getting back into livable shape. We were very worried about you here. I was glad to speak to Bob so as to make sure you were personally alright. I regret very much the losses you have suffered and hope that they will not be as wxcessive as at first feared.

Congratulations on your victory in the Potts case. It was well-earned and well-deserved.

I am anxious to see you all soon. Obviously we must discuss how to keep northern and central Louisiana covered now that LCDC has closed up in Shreveport and Monroe. I hope perhaps we can arrange for perhaps one of you to come here and talk with us up here.

By the way what is happening in the Minden school case?

I am preparing objections to the plan in the Jackson Parish case. It was suggested by John Doar that we move to reopen the plan in St. Tammany Parish in light of later Fifth Circuit cases some of which were yours.

My lovetto your families,

Sincerely,

CARL RACHLIN
General Counsel

CR/cs

cc: Marvin Rich

1/4

[from Ann Singer SEDF]

Negro student

James Potts
(SEDF scholarship student)
non franchising col.

Franchising La.

Wants to go to
La. Tech (white)
near Monroe (Sharp Esq)
as Sophom. Register

Feb 2, 1965

Bertha Bradford
at same time

her status uncertain
He has filed application
Registrar serial
2 who says his
papers all in order.
Gave him blank
form all 2d --
" " fill in
& HS Superintendent
who is white &
refused to sign
the form.
Fenton

Potts then found
out this form
is no longer
required by law.
~~Besides, already~~
~~has 1 yr college~~
Pres'ds of Grambl.
& La Tech have
discussed him -
(Sample of days ago)
Registrar insisted
on form anyway
she told him his

apply was in
Tech's hands —
Stell is in

Bring mandamus
proceeding?
Call Elia
Maybe get UCSC
help —

1/5

fu 1/10

hotin called -

sending certified letter to registrar + Supr of Schools Jonesboro

+

~~[illegible]~~ for writ of mandamus from US District Court (Dawkins?)

IN THE CITY COURT OF QUINCY,
GADSDEN COUNTY, FLORIDA.

THE CITY OF QUINCY,	)
-vs-	)
JOSEPH JOHNSON,	)
Defendant.	)
	)

Trial before Honorable
Jack Harnett at the City Hall,
Quincy, Florida, May 9, 1966,
commencing at 3:00 P.M.

APPEARANCES:

For the Defendant:

John D. Due, Jr.
540½ West Brevard Street
Tallahassee, Florida

THE COURT: Joe Johnson, the record shows that you were charged on the 2nd day of April, 1966, for resisting arrest. How do you plead - guilty or not guilty?

A Not guilty.

THE COURT: Officer Hanley and any other officers in this case please come forward. I think that we ought to start. It is my understanding, Mr. Due, that you filed witness subpoenas, and there was one witness subpoena directed to Mrs. Esther L. Wright. My understanding from police officers is that they were unable to find an Esther L. Wright. They did find someone by another name who, I believe, was a witness, and they instructed her to be here. However, this witness subpoena was returned unserved, and they have been unable to find anybody by that name, so we might better start since you have a court reporter and give the correct names of these witnesses.

MR. DUE: What are the names of these other persons?

A Mildred Jackson.

THE COURT: Yours is Miller Jackson?

A Yes, sir.

THE COURT: What's your name?

A Geraldine DuBose.

THE COURT: Geraldine DuBose?

A Yes, sir.

THE COURT: And what's your--

A Ethel B. Wright.

THE COURT: Who?

A Ethel B. Wright.

THE COURT: Ethel B. Wright? R-i-g-h-t?

A W-r-i-g-h-t.

THE COURT: And there's Officer Hanley - Officer George Hanley, and then there's G. W. Hanley, and --

A Officer Mitchell.

THE COURT: Officer James W. Mitchell. Okay, is this all the witnesses in this case? This all the witnesses?

MR. DUE: Yes, sir.

- - -

GEORGE HANLEY

was called as a witness and, after being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY THE COURT:

Q Officer Hanley, will you give your testimony.

A Your Honor, on the 4th and the 2nd, which is on a Saturday, at 2:30 P. M., we received a disturbance call, and I answered the call and went down on South Kent Street to a house that the man said that there was - had been fighting and cussing and raising sand - and we went in the house. When we got to the house we saw a woman sitting on the porch almost passed out. So, we went into the house - this girl over here, I know, and I'm not sure now, I believe that this one here -

I won't say, now, but I know that she came in. There was two of the girls came in the house and wanted to know what in the hell was going on.

THE COURT: You point to Geraldine --

A Geraldine DuBose, yes, sir, and some other girl. Now I'm not sure whether that girl there was with her or not, but I think - that other girl there. Anyhow, they came in the house and wanted to know what was going on, and I told the other officer with me to get rid of them, so he asked them if they lived there. They said no, so he told them to get out, so immediately they turned and left. Well then by the time they got out I turned back to the woman in the house to find out what the disturbance was - what was the trouble going on. This fellow here came in and wanted to know what in the goddam hell was going on over there. So I asked him - I said "Do you live here?" He said "no". I said "Well, go. When we need you, we'll send for you." So he turned and started to leave, and immediately I noticed he was intoxicated. So I told the other officer, I said "Arrest that man and put him in the car for being drunk." He went out to arrest the man, and I heard a scuffling. I was talking to the woman in the house at that time, and I went out, and he was trying to search Joe. Well, Joe had this knife in his hand - no not this one, sorry, it was this one - this knife here - and I had to twist

his arm almost off to take the knife away from him. We took the knife away from him and took him right on to the car and sit him down in the car. I went back to the house, and whenever we came back out of the house, well Joe was gone. Geraldine DuBose and that other girl was alaughing, and I asked them, I says "Where did that man go?" -Says "I don't know." But an old fellow sitting across the street on a porch says that he ran thataway and pointed west. Well, we went approximately two-thirds of a block, a city block there, around behind the house and to some old outside toilet. Joe had run in the toilet. The other officer run up and told Joe to come on and let's go, and Joe told him he wasn't going with him no goddam where - not today. He grabbed Joe by the right arm, and Joe twisted, and when he did I hit Joe, and he snatched Joe around, and Joe, I think, then hit a hinge - possibly a nail or something in the door facing. And then whenever we got Joe out Joe twisted again, and I hit Joe again, and we both caught Joe - one on each side of the arm - one on each arm, and took him to the car and placed him in the car with the other people that were - put in the car. We brought him on up to the jail, and we decided we'd better take him down to the hospital and let the doctor look at him. We took him down there, and the nurse saw that Joe wasn't hurt bad, so she referred us back to the doctor's office. We took Joe up there, and the

doctor was in process of moving into a new office, and there I left Joe. Now from there on I don't know what happened - I mean I didn't even go back, cause I was knocking off, so I left Joe at the doctor's office. Now the other officers picked him up from there, and they actually put him in jail. I didn't put him in jail.

THE COURT: Do you want to - Unless you want to do it otherwise, I'll take one witness at a time, and you can cross-examine after he finishes testimony so we can keep this thing in order.

MR. DUE: I have some questions.

CROSS EXAMINATION

BY MR. DUE:

Q Officer Hanley? What's your first name?

A George.

Q George Hanley. You said you received a disturbance call. From whom did you receive the disturbance call?

A The boy that told me - eh, I wasn't familiar with the man, but this woman over here sent him after me, and Ema Wright sent him after me, and his name - she called him "Pee Wee" now that's all I can tell you - I don't know.

Q The boy phoned?

A No, uh uh. He came to me in person.

Q Oh, I see.

Q And he said there was a disturbance at that house?

A Uh huh.

Q Eh, now Mr. Johnson, did he enter into the house?

A Yeah, he went all the way into the house - in the main living room - and inquired about what was going on.

Q And inquired about what was going on? You observed that he was intoxicated, did you say?

A Well, whenever he came in and wanted to know what was going on, I told him to get out. I didn't pay too much mind to him then, because I was primarily interested in the woman, but when I looked back around I saw that Joe was drunk.

Q Well, was he staggering - what were the circumstances?

A Well, his walk and his talk was very much at fault - like he had been drinking great quantities, I think, of whiskey --

Q You smelled it on him?

A Yeah, you could smell alcohol on him.

Q Do you know Mr. Johnson?

A Well, I didn't know him until then, but I know him now.

Q You never had to arrest him before?

A No, I never have had to arrest him before.

Q Now, you didn't see a scuffle; you just heard a scuffle after instructing the other officer to arrest him?

A Well, I heard it and then looked around and saw the other officer scuffling with him.

Q And then he put him in the car?

A No, he couldn't get him in the car. He was trying to take a knife away from him. I had to help him get the

knife away from him.

Q You do not know whether or not he had a knife drawn out or not, whether he had it in his hand --

A --Wasn't open, the knife wasn't open, but it was in his hand.

Q Was it possible that he took the knife out because he was instructed to empty his pockets?

A Well, I don't think so because he could have take it out without us having to twist his arm like I did. I almost twisted that man's arm off taking that knife away from him.

Q Then you put him in the car?

A I put him in the car.

Q Who was this person across the street, you say --

A I didn't ask the old man. Some of your witnesses there knowed him. I don't know who he is. It's an old, old fellow. He's about blind.

Q He told you that?

A He told me that he ran thataway --

Q He's blind --

A No, he's not blind, but he's real old - about blind. I imagine the old man is about 75 or 80 years old.

Q Are you sure that he said that he ran back - eh, back of the house?

A Yeah, he pointed to the way he went.

Q Oh, he just pointed the way he went? He didn't say --

A No, he didn't say. He just said he went thataway.

Q It was possible he was just going to the rest room?

A Well, it's possible, but highly impractical.

Q What I'm trying to get at.- he was, you know, charged with resisting arrest. Do you believe that he was trying to escape?

A That's what I think. I think he understood quite plainly --

Q You tried to get him back in --

A He told us there wouldn't be no need from us until we found him.

Q Can you say he was hiding from you?

A No, he didn't say he was hiding, but evidently nobody would have run - run in an old house like that that far unless they did intend to hide from --

Q Now, when you got to this outside toilet, how many police officers were with you?

A Just one.

Q Just one --

A Just one other.

Q Did you have to use billy clubs?

A Well, ordinarily we wouldn't have, but when you search a man and take a knife off of him, and then he runs, rams his hand in his pocket and says he's not going any further, well then you don't know what he's got in his pocket.

Q You had searched him?

A I had done searched him one time and put him in the car.

Q But, eh, you felt he must have had a pistol, or something --

A Well, I didn't know what he could have got out of that building.

Q --You thought he might have some more weapons?

A Well, I thought he might have something.

Q Did he take any weapon out?

A He had some keys in his pocket whenever we -- I forget which pocket.

Q Weren't you mad at him for leaving the car?

A No, I wasn't mad - what made me mad was the way he said that he wasn't doing it - we damn sure couldn't put him in jail if he worked for the city - said he just wasn't going to jail today.

Q Could you have used any other force other than the club?

A Well, if he had been out in the open I guess maybe we could have tackledhim like a football player - held him or something - but, eh, in that small-a-building you couldn't have.

Q Couldn't pull him out any way? I mean --

A Well, you could have by fighting him, I mean that's actually what we did. We pulled him out.

Q You hit him, personally, twice.

A Yeah, I was the only one that hit him.

Q You were the only --

A I was the only one that --

Q When he got outside - you hit him again?

A I hit him one time inside and one outside.

Q You thought he had a knife?

A I thought it was, because he still had his hand in his pocket, and I tried to get him to take his hand out of his pocket, and he wouldn't do it.

MR. DUE: That's all the questions I have.

G. W. HANLEY

was called as a witness and, after being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY THE COURT:

Q Officer, would you state your name first so that we'll have it for the record.

A G. W. Hanley. It was just like the other officer said there. We got the complaint and went down, and when Joe came in the house the other officer instructed me after he left to put him in the car for being intoxicated, and I got off of the porch there and went down to arrest Joe and started - and told him he was under arrest for being intoxicated and started to search him, and he wouldn't let me get my hand in his pocket, and he rammed his hand in his pocket and came out with a

knife, and I had him by the other arm, and he had his knife in his left hand - I mean his right hand, and we put him in the car. I don't know how he got out. Either somebody let him out or he crawled across the front seat. The door handles on the inside of the car had been taken off the lock mechanism to keep the doors from unlocking on the inside of the police cars. I could see he either got out over the front seat, or somebody let him out. It was a lot of laughing and so forth going on around there due to the fact that he got out of the car, and the old fellow on the porch there told us that he went in a southwesterly direction. About - I think he said almost a block away. He was in this old toilet. When we found him we told him come on let's go, and immediately he put in to not going so we carried him on and put him in the car.

Q Was there - from the time you put him in the car did you go back in the house?

A Yes, sir. We both stepped back into the house to get this woman. She was in the house, and my brother here, he had told her to lock up the house, and I stepped back in the house. The house was dark - no lights or anything - no electricity in the house. I stepped back upon the porch and walked in the front door to see what was going on, and when I turned around Geraldine DuBose was standing outside her house, and another girl, was standing up by the police car, and Joe was out of

the car and gone. I told my brother that he had got out or somebody had let him out.

Q When you found him in the outbuilding down the street, did you ask him to go with you?

A Right, yes, sir. He had walked in the little toilet, had turned around and was standing up against the wall.

Q What force was necessary, if any, either to get him out, or --

A Well, I grabbed him by the arm and proceeded to pull him out. He went to pulling backwards, cussing and telling us he wasn't going anywhere with us, that he worked for the city, and we didn't have any right being down there, and if he needed us he would call us. He got awful nasty about the thing. I had him by the arm and put my foot on the wall and gave a little tug at him, and he came part of the way out. He rammed his hand in his pocket. We didn't know what he was hiding. We had got the knife off of him earlier, but I had never been to the toilet out there - didn't even know it was there. I didn't know but what he had a pistol or another knife or something hid in there. That's when the other officer hit him.

CROSS EXAMINATION

BY MR. DUE:

Q When you went to this outside toilet, was the door shut to?

A No, the door was standing wide open, and he went in the door and had turned around and was standing beside the wall with his back to the wall.

Q Were you the first officer to touch him?

A I was the only one there to touch him.

Q You got him by the arm?

A I got him by the arm.

Q The left -

A Yeah, I grabbed him by the left arm.

Q Did you pull him out?

A I started to pull him out, and he pulled back in.

Q Did he get back in before your brother had to hit him?

A Well, when my brother got there - he got there first - he told me, he says "Here he is here." I was right behind him. I reached in and grabbed him by the arm. He pulled back, and that's when my brother stepped in the door.

Q He got inside - he couldn't have got on the other side of him though --

A No, eh --

Q --because of the toilet?

A --because of the toilet.

Q But he was - what did he do,reach over you, or - Were you near to him, or what?

A No. I was standing on the outside.

Q Uh huh.

A He was pulling back - going back towards the other wall.

Q Do you remember where he hit him?

A Somewhere along - about up here. That place on that side of his head is where he cut it on the hinge.

Q Then you were able to bring him on back outdoors?

A After he hit him, he grabbed him by the other arm and pulled him out.

Q I see. Now, did you grab him or did your brother grab him when he finally got him outside the toilet ?

A We both had ahold of him.

Q Well, were both arms restrained?

A No.

Q He still had one arm on the wall?

A I had him by this arm here, and he still had his hand in his pocket. I was trying to get his hand out of his pocket.

Q That's when your brother saw him and began to --

A He hit him one more time.

Q Well, what happened when you got to - eh- your brother took him to - eh - he thought maybe he should take him to a hospital or a doctor? Which doctor was it?

A We carried him to Dr. Price's office. We got there approximately 3:35. He stayed there 'til 6:00. We picked him up there. Dr. Price told us he thought that he might need to be admitted to the hospital, and the captain up here in charge of that shift wanted to talk to Joe, and we brought him by the station. The captain talked to him, and he advised us to take him by Dr. Wilhoit's. We got up there. Joe didn't

want to get out of the car - didn't want to see the doctor. He said he was okay, so the doctor advised us to put him in jail until he had sobered up. We put him in jail, and later on that night someone got him out and admitted him to the hospital.

MR. DUE: That's all, your Honor.

JAMES W. MITCHELL

was called as a witness and, after being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY THE COURT:

Q Officer, state your full name, please.

A James W. Mitchell. Your Honor, I was - came into this - actually the shift had changed, and I was ordered to go by the doctor's office to pick him up.

Q By Dr. who?

A By Dr. Price's office to pick him up. I got to Dr. Price's office, and he advised us that possibly he might need to go to the hospital. So the captain called us by and wanted to talk to him, and we brought him by the station. The captain advised us to carry him to another doctor, which we did. We got down there, and we carried him to Dr. Wilhoit's office. When we got to the doctor's office, he wouldn't cooperate at all. He wouldn't get out of the car. Dr. Wilhoit looked at him in the car and advised us to go ahead and put him in jail. That's all I have.

Q You weren't present and were unaware of any of the facts which might have transpired during the time of his arrest, is that correct?

A No, sir.

Q You came on the shift after he already had been arrested and already at the jail, or was he in the car at that time?

A He was at the doctor's office.

Q The doctor's office?

A Yes, sir.

Q Was he, in your opinion, intoxicated at that time?

A Yes, sir.

MR. DUE: That's about all the questions I have. May I give my case?

THE COURT: Yes.

JOSEPH JOHNSON

was called as a witness, and, after being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. DUE:

Q State your full name, please.

A Joseph Johnson.

THE COURT: Speak up loud - this - eh, say your name out again.

A Joseph Johnson.

Q Where do you live, Mr. Johnson?

A 916 Laurel Street.

Q How old are you?

A 59.

Q How much do you weigh?

A About 150.

THE COURT: 150?

A 150.

Q All right. Can you tell the Court what you were doing on the evening of April 2, 1966?

A I was going to the Seaboard - to the store, and they had the car parked, so I was standing there just looking, and one of them came and told me to get in the car. I got in the car, and they stayed in the house so long that I had to go to the bathroom. So I gets out and goes to the bathroom, and while I was up there they come, and told me to give 'em my knife, and I run my hand in my pocket and handed one of them the knife, and the other one hit me, and they beat me all the way to the car. And when I got in the car I asked them, I say "What y'all beating me up for?" They say "Cause we'd just as soon you'd be dead."

Q How did you get out of the car?

A I got over the seat.

Q Did you go to the restroom - this toilet?

A Yeah.

Q Were you hit then?

A That's when he first hit me - in the toilet. Because I had one little old pocket knife, well, he hit me.

Q And, eh, did one ask for your knife?

A Yeah, one asked for my knife.

Q Which one?

A I think it was this one.

Q Which one?

A This one.

Q That's eh --

THE COURT: Officer George Hanley.

Q --George Hanley. And you got it out and gave it to him?

A Took it out and handed it to him.

Q What happened at the toilet?

A Didn't anything happen, just came up before I got a chance to come out, and then he hit me in the toilet, and I handed him my knife.

Q George Hanley?

A Yes.

Q How many times?

A I don't know how many - eh --

Q Did you resist?

A --once inside. No, I didn't resist.

Q You didn't resist?

A I never resisted in my life.

Q You were coming back voluntarily?

A Yeah, I was coming back, myself.

Q And you told them that you were coming back?

A They didn't give me time.

Q Well, what happened after you were hit? Did they bring you back?

A Yeah, after a few minutes they carried me to Dr. Price and left me and come back. Dr. Price says to carry me to the hospital. He carried me to Dr. Wilhoit, and I says, "Doctor," I says "Carry me to the hospital." I say "Carry me to the hospital or put me back in jail."

Q Had you had anything to drink that day?

A Early that morning.

Q What did you drink that morning?

A I drink some whiskey - about 10 or 11.

Q About 10 or 11? Then what did you do the rest of that day?

A Nothing much - just walked around. I was going to the store to get some groceries.

Q You were on your way to the store?

A To get some groceries.

Q Which store?

A Seaboard.

Q Seaboard? That's where you shop for groceries?

A Sometimes.

MR. DUE: Next witness.

CROSS EXAMINATION

BY THE COURT:

Q Let me ask him something. Joe?

A Yes, sir.

Q Let me get this straight. You say that you were coming down the street when they arrested you?

A Yes, sir. I stopped and was just looking.

Q Did you go in the house?

A No, sir.

Q They didn't get the knife from you at the car?

A No, sir. I give it to them after I got out of the car and went to the toilet. I had my knife in my pocket in the car.

Q When they put you in the car, did you tell them you had to go to the toilet?

A No, they stayed so long 'til I had to go, so I just got over the seat and --

Q How long was that?

A I say 20 or 25 minutes.

Q About 25 minutes after they put you in the car?

A Yes, sir, about 20-25 minutes.

MR. DUE: Now where did you give them this knife? I want to get that straight.

A I give it to them at the toilet.

MR. DUE: Inside?

A Inside. He said "Give me your knife," and I handed it to him at that time.

MR. DUE: How did they know that you had it? Can you speculate on why they would think you had a knife?

A No. I sure don't.

MR. DUE: Can you open that knife with one hand?

A I never tried.

MR. DUE: What do you use that knife for?

A Just to trim finger nails and cut on things.

MR. DUE: That's all I have.

GERALDINE DUBOSE

was called as a witness and, after being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. DUE:

Q State your full name.

A Geraldine DuBose.

Q Where do you live?

A Seaboard Walk.

Q Did you hear what was said in Court today?

A I heard it - but I didn't - see 'em when they hit him. I didn't see that.

Q Tell exactly what happened about 2:00 on that day.

A Well, Joe Johnson - I was going to the faucet to get a bucket of water, so Joe - I met Joe, and I said "Joe, they done let you go?" And Joe say "No, I got to go somewhere to urinate." That's what Joe told me. And so the next thing I know they had done gone up there and got Joe and come back, and when I seen Joe he was bleeding. I didn't see them hit Joe. I ain't gonna tell that - I didn't see it. But Joe - when I seen Joe he was rolling a cigarette - a Prince Albert cigarette - Joe Johnson. He might have been drunk, but he didn't act like he was drunk to me.

THE COURT: Were you in the house?

A No, I was - I was out - See, I had been to the faucet - got a bucket of water to fix my baby some milk. But what else happened now, I don't know cause I can't see through another house and see did they hit him, cause I didn't see that.

THE COURT: Just awhile ago I thought you told the officer that you were in the house with somebody sitting down back there.

A No. Me and this girl back here, we had been in the house when he went to arrest us later.

THE COURT: That's what I'm asking you. Were you in the house?

A I was in the house - went in the house - me and this girl.

THE COURT: When the officers first went in there to arrest you?

A Yes. Me and this girl went in the house, and they told us when they needed us they would send for us, but we come on out.

THE COURT: When you came out was Joe in the house?

A Joe wasn't in the house then. Joe wasn't in the house. I didn't see Joe go in that house. I didn't see that, see. Cause when this fellow right here - I don't know his name - but he come back and asked me said who let - he called me and said who let Joe out of the car. I said - I was standing there on the porch brushing my teeth when he come back. And so he asked me, he say "Why did you let Joe out of the car?" I say "I didn't let Joe out of no car." And I didn't.

MR. DUE: Where's this faucet? You keep referring to a faucet.

A Well, that's - that's - See, that's - you ain't never been to my house. Well, see, I can't see through another house and see what's in that bathroom, now. I don't know what's -

Q Is the faucet outdoors?

A Yeah. It's outdoors. The toilet's outdoors.

Q So, you were in the back of the house?

A See, I can't see - there's a house between my house.

See, I couldn't see anything - I couldn't see between my house where he say he hit Joe. I couldn't see that, because I couldn't see between - through my house and another house.

THE COURT: Let me ask you this: Where were you when they first put Joe in the car?

A Well, I was to my house then.

THE COURT: You didn't see them put him in the car the first time?

A No, sir. I seen him. They put him in the car.

THE COURT: Where was he at when they put him in the car?

A I don't know where they got him. I come to the door, you see, and they were putting Joe in the car.

THE COURT: Did Joe have a knife in his hand at that time?

A I don't know,sir. I didn't see it. I don't know.

THE COURT: Were they scuffling with him at that time, trying to get him in--

A They put him in the car the first time. He wasn't resisting no arrest then, but I don't know what he did, you know, when they got back. I don't know what he did then. I'm telling you what I seen. That's all I can do.

THE COURT: When you came out of the house they were putting him in the car, is that right?

A They were - yeah - them two was putting him in the car.

THE COURT: You didn't see anything that happened before they put him in the car?

A No, I didn't. I ain't telling no story. I really didn't.

THE COURT: You don't know if he was in the house or not?

A No, I didn't see that.

THE COURT: You don't know if they had to take the knife away from him?

A No. I don't know that, cause I didn't see it. I didn't see that.

THE COURT: I'm just trying to get the story.

A I didn't see it.

MR. DUE: When did you first see Joe that day?

A When I seen Joe - when I first seen Joe Johnson, he was coming from the Seaboard. He was rolling a Prince Albert cigarette when I first seen him - Joe Johnson.

Q Walking down the street?

A It ain't no street. It's a alley through there, and when I first seen him he was rolling a Prince Albert cigarette, and the next thing that I knowed, they had Joe and put him in the car. Next news I know I met Joe - I went to the faucet to get a bucket of water and - I met Joe, and I says "Joe, they done let you go?" Joe say "No, I got to go somewhere and urinate." And I didn't pay no more attention to it, and so the next thing I know they was bringing Joe back and Joe with blood. I don't know why they hit him, or who hit

him, cause I don't know. I didn't see it. I didn't see it.

Q You say he didn't seem to be intoxicated? to you?

A I mean, not to me. I don't know about nobody else.

Q What I mean by that - eh - was he coherent in his speech?

A I didn't see all that now, Joe - Now I didn't see what all Joe did, cause I ain't gonna tell no story. I didn't see that.

Q I'm talking about the way he looked - eh - did he --

A I said he didn't look drunk to me.

Q Was he staggering?

A Well, he wasn't staggering when he was rolling that Prince Albert cigarette. He wasn't staggering then.

Q Could you tell by the smell whether or not he --

A Well, I couldn't tell you about that cause I - I mean I didn't - I didn't get close to him enough to smell that. I don't know about that.

Q Did he speak - I mean, did he speak clearly?

A Well, he spoke to me, and he talked.

Q You understood what he --

A Yeah, he talked to me, and he didn't act like he was drunk. H might have been drunk, but he didn't act like it to me. He talked to me - talked to me a long time. Now

whether he was drunk, I don't know about that, but he didn't act like it.

MR. DUE: Well that's all I have.

MILDRED JACKSON

was called as a witness and, after being first duly sworn, was examined and testified as follows:

THE COURT: State your full name.

A Mildred Jackson.

THE COURT: That's Mildred Jackson?

A Yes, sir.

THE COURT: Speak up loud when questions are asked, please.

DIRECT EXAMINATION

BY MR. DUE:

Q What's your address?

A Route 3, Box 103.

Q All right. Tell the Court what you saw this afternoon. - the first time you saw Mr. Johnson.

A Well, I was standing in the road, and Mr. George - um - and that one was - they was in Eva May's house, and one of 'em come to the door and had a half a pint of whiskey - it was a half or a half a pint of whiskey, and Mr. Joe Johnson was coming up a little path there behind Miss Glady's house, and he was going on out to the alley, and one come to the door and caught hold to his hand and put him in the car. So,

they went back in the house, and I was going on home, and when I looked back Mr. Joe Johnson was going on up the alley. I reckon he was going to the bathroom. But when I seen 'em again they had him by the hand coming on down that path, and his head was bleeding.

Q Now, how much time transpired from the time you saw his head bleeding - when you first saw them put him in the car?

A I don't exactly know cause I didn't have my watch on.

Q Well, was it a few minutes, or - the way you explained it, it seems that this was immediately afterwards. Was it some time that transpired from the time you saw his head bleeding and the time they placed him in the police car?

A I don't know exactly what time it is, but all I know is I seen Joe when they put him in the car, and the next thing I know he had crawled across the seat and got out of there --

Q You saw him do this?

A He got out hisself. I don't know how he did it, but he got out hisself.

Q Where were you all this time he was in the car?

A I was standing there in the road - there in front of Geraldine's house.

Q You saw him get out of the car? You saw him go in back of the house?

A He didn't go to the back of the house. He passed in front of the house going up the path - going to the bathroom.

Q Did you talk to him?

A No, I didn't.

Q How long have you known Mr. Johnson?

A Not long.

Q Are you related to him?

A No.

Q Did he appear to be drunk?

A No, sir.

Q Did you see him scuffling with the officers before they placed him in the car?

A No, sir.

MR. DUE: I have no further questions.

CROSS EXAMINATION

BY THE COURT:

Q You, eh - you state - when did you first see --

A When I, eh - when I --

Q --Joe Johnson? Were you standing outside during the whole thing?

A I was standing outside in the yard in front of Eva May's and Geraldine's house, and he was coming up the little path behind Miss Glady's house.

Q Now this was after the officers had already gone in the house?

A Yes, sir. And one of them come to the door with a half or a half a pint of whiskey, and they carried Eva May and put her in the car, and they already had put Mr. Joe Johnson in the car. He had got out, and went to the bathroom.

Q Now wait a minute. When they first put him in the car, where were you standing when they first put him in the car?

A I was standing there in the road, and he got out. They stayed in there so long - I don't know how - what time it was - but they stayed in so long, he got out and went across the street and went to the bathroom.

Q If you didn't talk to him, how did you know where he was going?

A You see, the bathroom is right across the road there from our house.

Q That's where he went, then? You don't know --

A He didn't say anything to me, but, see, I could see him. Our house is right across the road in front of the bathroom.

Q You didn't know what he was going for or why he went?

A No, sir. He didn't tell me.

MR. DUE: Was he running?

A No, sir. He was walking.

MR. DUE: Did he appear as if he was trying to get away?

A No, sir.

MR. DUE: That's all I have for this witness, your Honor.

ETHEL B. WRIGHT

was called as a witness and, after being duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. DUE:

Q State your full name.

A My name is Ethel B. Wright.

Q And where do you live?

A Route 3.

Q Do you have an address there?

A Yes, sir. Box 105.

Q Fully quote what you saw when you first saw Mr. Johnson.

A I was going down to Geraldine's house, and I seen them put him in the car.

Q Geraldine?

A That girl right there. And I was going down to get some water, and they went in the house to get Eva May, and Joe got out. Somebody said I let him out. This man here said he was going to arrest me, said if he --

Q Which one?

A --That one there. Says if he knowed I let him out he was gonna arrest me, too.

Q The white-haired one?

A That one right there, and I told him I didn't let him out. He got out over the seat.

THE COURT: Who said that you let him out?

A That man there said I was the one that let him out.

THE COURT: Did you let the door open and let him out?

A No, sir.

THE COURT: Did you go over to the car?

A I didn't go near the car.

MR. DUE: Did you see them put Joe in the car?

A Yes, sir.

Q Was there any scuffling before they put him in the car?

A No, sir. When I seen them there wasn't.

Q Now, did you see anything else that transpired after he got in the car?

A No, sir. I went on in Geraldine's house.

Q How long did you stay in the house?

A I stayed in there a good while.

Q When was the next time you saw Joe Johnson?

A When they was bringing - putting him back in the car.

Q Where were you when you saw him?

A I was going home.

Q Was he bleeding?

A Yes, sir.

Q How much?

A He was bleeding bad when I seen him.

Q You don't know whether or not he was trying to escape, do you?

A No, sir.

Q You didn't see him get out of the car?

A No, sir.

Q Did you talk to the officer after he was placed back in the car?

A Yes, sir. They went and carried him to the jail, and then they came back out here.

Q And what did they say?

A They seemed to think that I let him out - that man there say that if he found out that I let him out he was gonna arrest me. And I say,"Well, I ain't let him out. I came back home where my baby is."

Q Did he say anything else to you?

A No. Only he say he should have killed him, that's all he say.

Q He said that?

A Yes.

Q Did they say anything else about why he was hit?

A No, sir.

MR. DUE: That's all I have for this witness.

CROSS EXAMINATION

BY THE COURT:

Q You say you came down the street to go to Geraldine's house?

A Yes.

Q And as you were coming down the street is when they first put him in the car?

A Yes, sir.

Q Then you were still outside when he got out of the car?

A Yes, sir.

Q And then you went in the house?

A I went in the house then, and then when I come out they --

Q Well, when did you go in the house?

A I went down to Geraldine's when they was putting him in the car.

Q You went in the house before they put him in the car?

A They were putting him in the car.

Q All right then. Then you went in the house after they put him in the car?

A Yes, sir. That's right.

Q All right. Now who was in the house with you?

A Who was in Geraldine's house?

Q Yes.

A Nobody but her and her baby.

Q She and her baby and you were in the house?

A Yes, sir.

Q All right. Then when did you come back out of the house?

A I stayed in there a good while.

Q Then when you came back out of the house, that's when --

A When he got out of the car.

Q Now, you didn't see him get out of the car?

A No, sir.

Q You didn't see if anybody let him out of the car?

A No, sir. They said that I let him out.

Q Well, that isn't the question I asked you. Where were they in relationship to the car when you came back out of the house?

A They were getting ready to get Eva May.

Q He was already back into the car?

A No, sir, they was getting Eva May - police was.

Q Now, you said you were - Let's go back. You said that you went in the house while they were putting him in the car the first time?

A Yeah.

Q All right. You said you were coming back out of the house when they were bringing him from the --

A Uh uh. I say I met him when I was going back home.

Q You were going back home?

A Yes, sir.

Q Where was he going?

A They were taking him back to the car.

Q They were bringing him back to the car?

A Yeah.

Q How far were they from the car when you met them?

A They was coming from that path, and I was coming around.

Q Did you see anything that happened at the little outbuilding there?

A No, sir.

Q You don't know if he was resisting arrest or not?

A No, sir.

Q You don't know what happened?

A No, sir.

MR. DUE: Let's go back. When you first saw Mr. Johnson they were taking him to the car the first time?

A Yes.

MR. DUE: You don't know whether or not he had been in the house?

A No, sir.

MR. DUE: I have no further questions, your Honor.

THE COURT: Officer Hanley, you were the arresting officer. You heard the witnesses. Do you have any questions you want to ask any of the witnesses?

OFFICER GEORGE HANLEY: I'd like to ask this woman here, your Honor. Ain't you the one that sent after us?

A I told someone to go call you, but he said he didn't call you.

OFFICER HANLEY: And to tell me to come down?

A Yes, sir. But he say he didn't call you.

OFFICER HANLEY: Well, somebody --

A He called Mr. Marsh. (Phonetic)

OFFICER HANLEY: Someone told me - I - and we haven't been able to find the people, but eh --

A I asked him Friday night, and he said he didn't call you - He called Mr. Marsh. (Phonetic)

THE COURT: That, at this time, I don't believe, has anything to do with it.

OFFICER HANLEY: Other than that that was all that I was wanting to ask her.

THE COURT: I want to - while you've got the record here. I want to put in the record this man was arrested on April 2, 1966, and his case was set for trial on April 4th. It was postponed at that time because he was in the hospital 'til April 11, 1966, and then subsequently thereafter was postponed

on April 11th to the 18th at the request of the defendant in order that he might have an opportunity to confer with an attorney. It was again rescheduled for April 18th, and on April 18th it was postponed until April 25th, cause he was unable at that time to have counsel with him, and then again on April 25th it was postponed until May 2nd, and then on May 2nd again it was postponed to May 9th to give defendant ample opportunity to confer with and to have an attorney of his choice herewith. Joe Johnson, having pled not guilty, the Court having heard the evidence, the judgment of the Court is Joe Johnson is found guilty, as charged, with resisting arrest and fined $75.00 or, in lieu thereof, to serve 30 days.

THE COURT: Joe Johnson, on April 2, 1966, you were arrested on charges of being intoxicated. How do you plead?

A April 2nd?

THE COURT: Yes, April 2nd.

A Not guilty.

THE COURT: Okay. Are these going to be your same witnesses?

MR. DUE: Yes.

GEORGE HANLEY

was called as a witness and, after being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY THE COURT:

Q State your name.

A George Hanley. I was the arresting officer that was on - just a second I have to refer back to my notes - that was on a Saturday, the 4th and the 2nd of '66 at 2:30 P.M. on South Kent Street, and he was very much intoxicated to the extent that his talking was impaired and his actions - walking and everything.

Q Your determination was that he was intoxicated by drink or could he have been sick or anything else?

A I think it was by drink, yes, sir, because you could smell alcohol on him, or some intoxicating beverage.

CROSS EXAMINATION

BY MR. DUE:

Q Have you observed Mr. Johnson, today?

A Yes.

Q Would you say that he was intoxicated?

A No, I would say that he was definitely not intoxicated.

Q You heard him speak. Was his speech any different that day?

A Well, his speech was impaired a lots and he was staggering whenever he was awalking, and he just walked right in and wanted to know what in the hell was going on, and the average man just wouldn't do that unless he was drunk.

Q He came right on into the house?

A He came right into the living room, cause I was at the

back door whenever he come right on in - stood right at the foot of the bed whenever I asked him.

Q Now who were you talking to when he came on in like that?

A To Eleanor Stevens.

Q Eleanor Stevens?

A Eleanor Stevens.

Q He went through the livingroom?

A No, he went into it. You see this house is just a two room house with a kitchen on one end and the bedroom and livingroom is all one room. Now we were in the bedroom and livingroom part of the house, and Eleanor had got up off the porch and went and sit down on the bed, and I was standing at the door.

Q So he walked - how many feet did he walk into --

A Oh, I'd say that he walked - made two or three steps inside, possibly, not quite as far from here to - oh as far from here to Mr. Cross there.

Q Now these two or three steps he made, was it sufficient to show that he was bleeding - eh, that he was drunk?

A Well, I saw him when he was coming in, and I actually thought that he lived there - I mean I thought that was his home until he wanted to know what in the hell was going on. Then I asked him did he live there. See, I talked with him there for a minute. He said no, he didn't live there.

That was his friends, and that he could come see his friends if he wanted to. And then that's whenever I asked him to leave.

Q Is it true that the circumstances which made you believe that he was drunk was that he was so bold as to just walk into a house?

A Well, the way that he was awalking, too. I mean he was staggering. He was just plum wobblified whenever he was walking.

Q You could smell the liquor?

A Yeah, you could smell alcoholic beverages on him.

Q You couldn't make out what he was saying, though?

A Oh, yeah, you could make out what he was saying, cause he was talking loud and clear. You could hear him half a city block.

Q Better than what you can hear him now?

A Oh yeah, much better. You wouldn't need no intercom system to have understood him that day.

MR. DUE: I have no further questions.

G. W. HANLEY

was called as a witness and, after being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY THE COURT:

Q State your name.

A G. W. Hanley. On the 4th and the 2nd there, we was in this house and Joe walked across the porch and into the front room there which is about as far as from here to Mr. Cross - back of his chair - and was talking in a real loud manner - didn't care what he said or how he said it - who was listening to him. He showed no respect for nobody, no place, and his speech was imperative. According to what it is now, his walking wasn't exactly right. He did stagger, and he just didn't carry himself in the same manner as he's carrying it in today. I would say that he was drinking alcoholic beverages to the quantity there that he didn't know what he was doing. You could smell alcoholic beverages on his breath to a great extent.

Q In your opinion, then, he was intoxicated?

A Yes, sir.

CROSS EXAMINATION

BY MR. DUE:

Q You say his speech was impaired, then, but you could - you understood him. You could understand him better then than now?

A That's right, because he was talking in a loud manner. You could have heard him halfway from here to the Safety building across the parking lot out there.

Q Where were you?

A I was in the building there with --

Q You were in the house, also? There in the bedroom?

A Right.

Q You saw him come into the house?

A Watched him walk across the porch.

Q After you took him to the station, did you give him drinking tests, or anything like that?

A No, we carried him to the jail and from there to the hospital and from the hospital to Dr. Price's office. The nurse and the doctor down there had a lot of trouble with Joe, he wouldn't stay still - didn't want to listen to 'em. The doctor down there told me says - he made the statement that he couldn't give Joe the adequate treatment that he needed due to the fact that he was drinking so much he wanted to be bullheaded. He told us that it would be advisable to admit him to the hospital, and we brought him on back, and Dr. Wilhoit looked at him, and we put him in jail.

Q Do you know whether or not they took a blood test at the hospital?

A I couldn't tell you anything about it.

Q You do not know how much blood he had - how much alcohol he had in his blood, can you?

A Well, I know that when he went in he had been drinking to a great extent. I don't know the amount of alcohol he had in his blood at that time.

Q Now, there were no tests other than --

A No blood alcohol tests.

Q --Except for what you observed when he came in the house?

A That's right.

MR. DUE: I have no other questions.

JAMES W. MITCHELL

was called as a witness and, after being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY THE COURT:

Q Officer Mitchell?

A James W. Mitchell. Your honor I came into this after Officer Hanley had gone off duty, and I had orders to go around to Dr. Price's office and pick him up, and then Dr. Price made the statement that possibly we should carry him on to the hospital. From there we brought him to the station, and from there to Dr. Wilhoit's office. Both doctors also made the statement that he was intoxicated.

Q What time was this?

A It was 6:00 - approximately 6:00.

Q Were you aware that this was some 3 or 4 hours after he was originally arrested? Wasn't he arrested - what time was he arrested?

GEORGE HANLEY: At approximately 2:30 whenever we picked him up, and I think it was close to 6:00 whenever we admitted him to the jail.

G. W. HANLEY: We stayed at the doctor's office right at 3 hours.

Q You're testifying that in your opinion that at 6:00 - in your opinion - that he was still under the influence of intoxicating liquors?

A Yes, sir.

Q To such an extent that it impaired his natural ability to --

A Yes, sir, because in my opinion he wasn't cooperative at all.

Q Would you describe him as still being drunk at that time?

A Yes, sir.

CROSS EXAMINATION

BY MR. DUE:

Q Did you know that he had been struck several times?

A I did. Twice.

Q This is just what you had heard? You didn't see it?

A Yes, when the arrest was made.

Q Well, in your opinion, in your experience as a police officer, could it have been possible that his impairment of speech and walk could have been caused by the strikes upon his head?

A No, I couldn't determine that. I could smell alcohol on his breath.

Q In other words, what you were able to smell is the basis for your testifying that he was under the influence of alcohol?

A And the way he walked and talked.

Q Well, you don't know whether the way he talked was caused by a strike on the head or --

A No, I wouldn't say that.

MR. DUE: That's all I have.

GERALDINE DUBOSE

was called as a witness and, after being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. DUE:

THE COURT: State your name.

A Geraldine DuBose.

Q At the time which has been described after 2:30 on this particular day, was there occasion - were you able to observe Mr. Johnson?

A I don't know exactly what time it was, but when I seen Joe Johnson - when I seen him I don't know what time it was cause I don't have a clock, but when I seen him he was walking, rolling a cigarette-Prince Albert cigarette - Joe Johnson was. Cause I didn't have time to go out there, I mean, and look at him, cause I had to see about my baby.

Q Well, then --

A I, I ain't seen Joe Johnson go in the house. If I had seen him I would have said I seen him, but I didn't see him.

Q You just saw him outside?

A I seen him outside and I seen him when they put him in the car the first time and then after they went back in there - Eva May's house - Eva May Stevens - Well they went back in there. Well, I reckon they was still searching Eva's house then. Joe - I went to the faucet and got a bucket of water. I met Joe. I says "Joe, they done let you go?" Joe say "No, I got to go somewhere --

Q Well, was he --

A --and urinate."

Q Was he speaking --

A He talked to me.

Q -- clearly?

A He spoke to me. That's how he told me he was going to urinate.

Q Was there any impairment of his voice?

A No, not that I know anything about. I don't know too much about that - like that myself.

Q Did you smell any alcohol?

A I didn't get that close to him.

Q How close --

A Not to smell it.

Q Were you as close as you are from Officer Hanley?

A You see, Joe Johnson passed by me, and I was talking to that girl there.

Q Well, was there a cloud of alcohol following him?

A I didn't pay that much attention, but he didn't act like he was drunk to me.

Q He was not staggering?

A He wasn't staggering when I seen him.

MR. DUE: Okay. That's all I have.

MILDRED JACKSON

was called as a witness and, after being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. DUE:

Q Tell the Court what your name is.

A My name is Mildred Jackson.

Q Now, on this particular day which has been described, were you able to observe the behavior of Mr. Joe Johnson?

A Well, when I seen him he didn't act like he was drunk to me. He didn't say anything.

Q Well, what time was this? Was it in the afternoon?

A Yes, sir.

Q But he didn't say anything to you?

A No, sir.

Q But you saw him walk?

A Yes, sir.

Q How far - How close were you to Mr. Johnson?

A I wasn't close enough to him to smell any whiskey, but

when I seen him he wasn't staggering.

Q That's all I have for this witness.

ETHEL B. WRIGHT

was called as a witness and, after being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. DUE:

Q State your full name.

A Ethel B. Wright.

Q On this particular day were you able to observe Mr. Joe Johnson's behavior?

A Yes.

Q When did you first see him?

A Well, when I seen him they was putting him in the car.

Q You didn't see him go in the house?

A No, sir.

Q It was outdoors?

A Yes, sir.

Q Were you able to observe how he walked?

A Yes. When I saw him he didn't look like he was drunk. Now, he might have been drinking now, I don't know. I didn't get that close to him.

Q Was he staggering?

A No, sir. He wasn't.

Q Did he say anything to you?

A No, sir.

MR. DUE: That's all I have for this witness.

THE COURT: You don't know whether he was drunk or not do you?

A No, sir.

MR. DUE: That's all I have,your Honor.

THE COURT: Joe Johnson, your having pled not guilty, and the Court having heard the evidence, the Court finds you guilty and assesses you for a fine of $15.00 or 5 days.

- - -

THEREUPON COURT WAS ADJOURNED.

F L O R I D A)

LEON COUNTY)

I, MYRNA ROBERTS, Acting Court Reporter of the Second Judicial Circuit of Florida, do hereby certify that I took the foregoing proceedings in shorthand and by Audograph recording at the time and place and in the cause indicated in the caption and later reduced same to typewriting; and I further certify that said transcript constitutes a true and correct statement of the proceedings had.

WITNESS my hand this 25th day of May, A. D. 1966.

Myrna Roberts

Acting Court Reporter
Second Judicial Circuit
Tallahassee, Florida

RECEIVED
MAR 9 1966

IN THE COUNTY COURT OF LAUDERDALE COUNTY, MISSISSIPPI

MRS. MARY QUINN — PLAINTIFF

VS. — NO._____

JOSEPH M. MORSE and CONGRESS OF RACIAL EQUALITY — DEFENDANT

DECLARATION

Comes now Mrs. Mary Quinn and files this her Declaration against Joseph M. Morse, individually, and against Joseph M. Morse, as agent for the Congress of Racial Equality and would respectfully show the following:

1. That the plaintiff is an adult resident citizen of Lauderdale County, Mississippi, and that the defendant, Joseph M. Morse, resides at the CORE Headquarters in Meridian, Mississippi, which is located at 513 - 25th Avenue, and is in charge of the local CORE operation and is, therefore, proper agent for process on CORE.

That on or about the 21st day of December, 1965, the defendant, Congres of Racial Equality, was operating its business and organization in the State of Mississippi, and particularly in Meridian, Lauderdale County, Mississippi, and used automobiles in and about its said business, said automobiles were operated and driven by its agent and employee on said date, and theretofore and thereafter the defendant, Joseph M. Morse, was the agent and employee of the said defendan Congress of Racial Equality, and, as such agent and employee, was driving a 1959 Ford automobile in a northerly direction on 31st Avenue and at the intersection of 31st Avenue and 8th Street in the City of Meridian, Lauderdale County, Mississippi, and at said time and place said defendant, Joseph M. Morse, was acting within the scope of his authority as such agent and employee of the defendan Congress of Racial Equality.

2. That on or about the 21st day of December, 1965, in the City of Meridian, on 8th Street at the intersection of 31st Avenue, the plaintiff was pro-

ceeding east at a slow rate of speed keeping a proper lookout with her vehicle under constant and easy control and obeying all traffic laws. That there was a traffic control light at the intersection of 8th Street and 31st Avenue and at said time Section 23-4 of the Code of Ordinances of the City of Meridian, Mississippi of 1962, which reads as follows, was in full force and effect:

"Meaning of traffic control signals.

"Whenever traffic is controlled by traffic-control signals exhibiting the words 'go', 'caution', or 'stop', or exhibiting different colored lights successively, the following colors only shall be used and such terms and lights shall indicate as follows:

"(a) Green alone or 'go'.

(1) Vehicular traffic facing the signal may proceed straight through or turn right or left unless a sign at such place prohibits either such turn. But vehicular traffic shall yield the right of way to other vehicles and to pedestrians lawfully within the intersection at the time such signal is exhibited.

(2) Pedestrians facing the signal may proceed across the roadway within any marked or unmarked crosswalk.

"(b) Yellow alone or 'caution' when shown following the green or 'go' signal.

(1) Vehicular traffic facing the signal shall stop before entering the nearest crosswalk at the intersection, but if such stop cannot be made in safety a vehicle may be driven cautiously through the intersection.

(2) Pedestrians facing such signal are thereby advised that there is sufficient time to cross the roadway, and any pedestrian then starting to cross shall yield the right-of-way to all vehicles.

"(c) Red alone or 'stop'. Vehicular traffic facing the signal shall stop before entering the nearest crosswalk at an intersection or at such other point as may be indicated by a clearly visible line and shall remain standing until green or 'go' is shown alone.

"(d) Red with green arrow. Vehicular traffic facing such signal may cautiously enter the intersection only to make the movement indicated by such arrow but shall not interfere with other traffic or endanger pedestrians lawfully within a crosswalk."

The plaintiff approached the intersection from the west going east on 8th Street at a reasonable rate of speed and observed the traffic light was green as to her and to traffic proceeding east on 8th Street. The light remained green as to the plaintiff as she entered said intersection. Suddenly, without warning, the defendant came from the south on 31st Avenue and negligently failed to keep a proper lookout to the front and sides of his moving Ford automobile, and negligently failed to keep the automobile which he was operating under constant and easy control. The defendant negligently attempted to take over the intersection which this plaintiff had first entered on a green light. The plaintiff attempted to avoid a collision with the automobile of the defendant but was unable to do so because of the negligence of the defendant.

3. The action of the defendant in so driving and handling his automobile were in negligent violation of Sections 23-39 and 23-40 of the Code of Ordinances of the City of Meridian, Mississippi of 1962 which reads as follows:

> "Sec. 23-39. Duty to keep vehicle under control.
>
> "It shall be the duty of the operator of any vehicle to keep said vehicle under constant control (1949 Code, Ch. 27, § 39)."
>
> "Sec. 23-40. Duty to watch for hazards, avoid accidents.
>
> "It shall be the duty of the operator of any vehicle to keep a vigilant watch for all other vehicles, pedestrians and other traffic hazards and to proceed with care and caution to avoid colliding with other vehicles, pedestrians or other hazards."

4. The defendant was under a duty to slow, stop or turn his vehicle to avoid collision upon seeing plaintiff's vehicle already in said intersection and he negligently failed to do so. All of the aforesaid negligence of the defendant made this accident unavoidable as to the plaintiff. The plaintiff was guilty of no negligence in the driving and handling of her automobile and in entering the intersectio but the negligent actions of the defendant created a sudden emergency as to the plaintiff. Thereupon, plaintiff drove and handled her vehicle as a reasonably prudent person would have done under the same circumstances and was guilty of no negligence but the negligent acts of the defendant made this collision unavoidable as to the plaintiff.

5. The sole, proximate or material contributing cause of this accident was the negligence of the defendant as herein alleged and his failure to keep his car under easy and constant control, his entering said intersection in violation of said City Ordinances of the City of Meridian, Mississippi of 1962 regarding traffic controls and as otherwise set out in this Declaration.

6. As a proximate result of the aforesaid negligence of the defendant a collision resulted between the plaintiff's and defendant's automobiles proximatel causing the plaintiff, Mrs. Mary Quinn, to become sick, sore and disordered and requiring medical care, doctor bills and expenses, and proximately causing her to suffer extreme shock to her nervous system and to suffer mental pain and anquish; that plaintiff was grievously bruised, torn, hurt and injured. The plaintiff was disabled from attending to her household duties as a proximate res of said collision for about a week and has had to proceed with great pain and difficulty. That the plaintiff suffered severe pains for a long period of time following the accident in her shoulder and back and the plaintiff still suffers great pai in her back intermittently. That she has frequent headaches as a result of her injuries and that all of her injuries are lasting and permanent. That the plaintii has been under the care of doctors and has been taking medication, all the resul of the aforesaid collision and that she has incurred medical bills in the amount of $. That the plaintiff will continue to suffer from the injuries re ceived in the aforesaid collision in the future. All of the plaintiff's injuries and damages as aforesaid were proximately caused by the defendant's negligence.

WHEREFORE, PREMISES CONSIDERED, plaintiff brings this suit agair the defendants, Joseph M. Morse and the Congress of Racial Equality, and demands judgment in the sum of $9,000.00 and all costs herein.

Respectfully submitted,

MRS. MARY QUINN

BY: _____

HAMILTON & MARTIN, Her Attorne

IN THE COUNTY COURT
OF LAUDERDALE COUNTY, MISSISSIPPI

MRS. MARY QUINN,	:	
PLAINTIFF	:	
VS.	:	NO. _____
JOSEPH M. MORSE and CONGRESS OF RACIAL EQUALITY,	:	
DEFENDANTS	:	

A N S W E R

Comes now the defendant, Joseph M. Morse individually, by his attorney and files this his Answer to Declaration, in the above-styled and numbered cause, and for his answer would show unto the Court the following; to wit:

1. Defendant denies each and every allegation of section 1 of the Declaration herein except that defendant admits that the plaintiff is an adult resident citizen of Lauderdale County, Mississippi and defendant admits "That on or about the 21st day of December, 1965, ... defendant Joseph M. Morse ... was driving a 1959 Ford automobile in a northerly direction on 31st Avenue and at the intersection of 31st Avenue and 8th Street in the City of Meridian, Lauderdale County, Mississippi, ...".

2. Defendant denies each and every allegation of that paragraph numbered "2" of the Declaration herein except that defendant admits "That on or about the 21st day of December, 1965, in the City of Meridian, on 8th Street at the intersection of 31st Avenue, the plaintiff was proceeding east ..."; defendant admits "That there was a traffic control light at the intersection of 8th Street and 31st Avenue ..."; defendant lacks sufficient knowledge to be able to admit or deny that Section 23-4 of the Code of Ordinances of the City of Meridian, Mississippi of 1962, as set out in that paragraph numbered "2" of the declaration, was in full force and effect at the above-mentioned time; defendant lacks sufficient knowledge

to be able to admit or deny that the language of said ordinance as set out in that paragraph numbered "2" of the declaration reads as it is so set out; defendant admits that "The plaintiff approached the intersection from the west going east on 8th Street ..."; defendant lacks sufficient knowledge to be able to admit or deny what the plaintiff observed as to the traffic light.

3. The defendant denies that his actions were in negligent violation of the alleged sections of the Code of Ordinances of the City of Meridian, Mississippi of 1962 as set forth in that paragraph numbered "3" of the declaration.

4. The defendant denies each and every allegation of that paragraph numbered "4" of the declaration.

5. The defendant denies each and every allegation of that paragraph numbered "5" of the declaration.

6. The defendant denies each and every allegation of that paragraph numbered "6" of the declaration except that defendant admits that plaintiff brings this suit against the defendant.

Defendant denies that the plaintiff is entitled to a judgment against him in any amount.

WHEREFORE, defendant demands that this cause of action be dismissed against him at the cost of plaintiff herein.

Respectfully submitted,

JOSEPH M. MORSE

BY: s/R. Jess Brown

R. Jess Brown
Alvin J. Bronstein
Malcolm Farmer III

Attorneys for Defendant

CERTIFICATE OF SERVICE

I certify that on this 14th day of March, 1966 I served a copy of the foregoing Answer upon Hon. Joseph Clay Hamilton, 909-910 Greater Mississippi Life Building, Meridian, Mississippi, by first class mail, postage prepaid.

s/R Jess Brown
Attorney for Defendant
Joseph M. Morse

IN THE COUNTY COURT
OF LAUDERDALE COUNTY, MISSISSIPPI

MRS. MARY QUINN,	:	
PLAINTIFF	:	
VS.	:	NO. _____
JOSEPH M. MORSE and CONGRESS OF RACIAL EQUALITY,	:	
DEFENDANTS	:	

NOTICE OF AFFIRMATIVE DEFENSES
UNDER THE GENERAL ISSUE

TO: MRS. MARY QUINN, PLAINTIFF and
HON. JOSEPH CLAY HAMILTON, her
attorney:

You, and each of you, will please take notice that on the trial of the above styled cause, the defendant, Congress of Racial Equality, will offer evidence tending to prove and will prove, the following affirmative matters under the plea of general issue, to wit:

1. That defendant Congress of Racial Equality is not and was not doing business in the State of Mississippi or particularly in Meridian, Lauderdale County, Mississippi, at the time of the alleged incidents complained of herein, at the time of the purported service of process on it herein, or at present; nor is or was said defendant licensed to do business in the State of Mississippi at any of the above-mentioned times, and therefore this defendant is not subject to the jurisdiction of this honorable court and should be dismissed from the action herein.

2. That defendant Joseph M. Morse was not a proper agent for service of process on defendant Congress of Racial Equality at the time of the purported service of process on defendant Congress of Racial Equality and therefore defendant Congress of Racial Equality has not been served in the action

herein. Thus, this honorable court lacks jurisdiction over defendant Congress of Racial Equality and should dismiss defendant Congress of Racial Equality from the action herein.

3. That defendant Congress of Racial Equality does not and at the time and place of the wrongs complained of herein did not own, have any interest in, use or have any control or direction over the automobile allegedly driven by defendant Joseph M. Morse, and furthermore, defendant Joseph M. Morse was not driving said automobile as the agent or employee of defendant Congress of Racial Equality at the time and place of the wrongs complained of herein; nor was defendant Joseph M. Morse acting within the scope of any alleged authority as an agent or employee of defendant Congress of Racial Equality at the time and place of the wrongs complained of herein; and therefore defendant Congress of Racial Equality cannot be deemed to be doing business in Mississippi on the grounds that it committed any of the wrongs complained of herein and furthermore, defendant Congress of Racial Equality has been improperly joined as a defendant herein and should be dismissed from this action.

Respectfully submitted,

s/ R. Jess Brown

R. Jess Brown
Alvin J. Bronstein
Malcolm Farmer III
603 N. Farish St.
Jackson, Mississippi

Attorneys for defendant Congress of Racial Equality

CERTIFICATE OF SERVICE

I certify that on this 14th day of March, 1966 I served a copy of the foregoing Notice of Affirmative Defenses under the General Issue upon Hon. Joseph Clay Hamilton, 909-910 Greater Mississippi Life Building, Meridian, Mississippi, by first class mail, postage prepaid.

s/ R. Jess Brown
Attorney for Defendant
Congress of Racial Equality

IN THE COUNTY COURT
OF LAUDERDALE COUNTY, MISSISSIPPI

MRS. MARY QUINN,	:	
PLAINTIFF	:	
VS.	:	NO. _____
JOSEPH M. MORSE and CONGRESS OR RACIAL EQUALITY,	:	
	:	
DEFENDANTS	:	

A N S W E R

Comes now the defendant, Congress of Racial Equality, by its attorneys and files this its Answer to Declaration, in the above-styled and numbered cause, and for its answer would show unto the Court the following; to wit:

1. Defendant denies each and every allegation of those paragraphs numbered "1" of the declaration herein except that defendant lacks sufficient knowledge to admit or deny the allegation "that the plaintiff is an adult resident citizen of Lauderdale County, Mississippi,...".

2. Defendant lacks sufficient knowledge to admit or deny any of the allegations of that paragraph numbered "2" of the declaration herein.

3. The defendant lacks sufficient knowledge to be able to admit or deny any of the allegations of that paragraph numbered "3" of the declaration herein.

4. The defendant lacks sufficient knowledge to admit or deny any of the allegations of that paragraph numbered "4" of the declaration herein.

5. THe defendant lacks sufficient knowledge to admit or deny any of the allegations of that paragraph numbered "5" of the declaration herein.

6. The defendant lacks sufficient knowledge to admit or deny any of the allegations of that paragraph numbered "6" of the declaration herein except that defendant denies that the plaintiff is entitled to a judgment against it in any amount.

WHEREFORE, defendant demands that this cause of action be dismissed against it at the cost of plaintiff herein.

Respectfully submitted,

CONGRESS OF RACIAL EQUALITY

BY: s/R Jess Brown

R. Jess Brown
Alvin J. Bronstein
Malcolm Farmer III

Attorneys for Defendant

CERTIFICATE OF SERVICE

I certify that on this 14th day of March, 1966, I served a copy of the foregoing Answer upon Hon. Joseph Clay Hamilton, 909-910 Greater Mississippi Life Building, Meridian, Mississippi, by first class mail, postage prepaid.

s/R. Jess Brown
Attorney for Defendant Congress
of Racial Equality

IN THE COUNTY COURT
OF LAUDERDALE COUNTY, MISSISSIPPI

MRS. MARY QUINN,	:	
PLAINTIFF	:	
VS.	:	NO. _____
JOSEPH M. MORSE and CONGRESS OF RACIAL EQUALITY,	:	
DEFENDANTS	:	

TO: Hon. Joe Clay Hamilton
Hamilton & Martin
909-910 Greater Mississippi Life Building
Meridian, Mississippi 39301

NOTICE OF FILING INTERROGATORIES

You are hereby notified that the attached interrogatories propounded to the plaintiff have been filed in the above-styled cause in the office of the Clerk of the County Court of Lauderdale County, Mississippi, to be answered by the plaintiff in accordance with section 1712, Miss. Code of 1942.

Dated this _____day of March, 1966.

R. Jess Brown
Alvin J. Bronstein
Malcolm Farmer III
603 N. Farish St.
Jackson, Mississippi

Attorneys for Defendants

IN THE COUNTY COURT
OF LAUDERDALE COUNTY, MISSISSIPPI

MRS. MARY QUINN,	:	
PLAINTIFF	:	
VS.	:	NO. _____
JOSEPH M. MORSE and CONGRESS OF RACIAL EQUALITY,	:	
DEFENDANTS	:	

TO: MRS. MARY QUINN, PLAINTIFF IN THE ABOVE-STYLED AND NUMBERED CAUSE:

THE FOLLOWING INTERROGATORIES ARE HEREBY FILED AND PROPOUNDED TO YOU BY THE DEFENDANT, JOSEPH M. MORSE UNDER THE TERMS AND CONDITIONS OF SECTION 1712, MISSISSIPPI CODE OF 1942:

INTERROGATORIES

1. State your age and occupation.

2. State the make, model, year, approximate value, and ownership of the automobile which you were driving at the time of your automobile accident with defendant Joseph M. Morse

3. State the precise rate of speed in miles per hour that your automobile was proceeding at the time that it entered the intersection of 8th Street and 31st Avenue in the City of Meridian, Mississippi on December 21, 1965.

4. Describe the weather conditions at the time you entered said intersection. State the time of day at which you had said automobile accident.

5. Describe with particularity any injuries which you suffered before December 21, 1965, excluding minor cuts and bruises, to the parts of your body which you allege were injured in said automobile accident.

6. Describe with particularity any lasting effects of such injuries and specifically any effects which were in existence on or about December 21, 1965.

7. State the dates and locations of any hospitalization or confinements due to physical injuries, shock to your nervou

system or mental pain and anguish which you were required to undergo previous to December 21, 1965.

8. State the causes of any hospitalizations or confinements which you were required to undergo previous to December 21, 1965.

9. Describe with particularity the treatments which you received during any hospitalizations or confinements occurring previous to December 21, 1965.

10. List the names and addresses of any and all doctors, chiropractors or practitioners of the healing arts who treated you for the injuries listed in interrogatory number 5 and who treated you during any hospitalizations and confinements occurring previous to December 21, 1965.

11. List the names and addresses of any and all doctors, chiropractors and practitioners of the healing arts from whom you were receiving treatment or medicines on or about December 21, 1965.

12. Describe with particularity the ailments, injuries, or physical, mental emotional or nervous conditions for which you were receiving medical treatment or medication on or about December 21, 1965

13. Are you willing to grant permission to defendant's attorneys to inspect the medical records, including, without limiting the generality of the foregoing, hospital records, doctors' chiropractors' or practitioners' of the healing arts' reports and diagnoses, and x-rays, which are connected with the injuries, conditions, sicknesses, hospitalizations and confinements which you underwent previous to December 21, 1965?

14. State the precise manner in which you allegedly became "... sick, sore and disordered ..." as a result of your automobile accident with defendant Joseph M. Morse on December 21, 1965.

15. State the precise nature of the alleged extreme sho to your nervous system and the alleged mental pain and anguish

which you allegedly suffered as a result of said automobile accident.

16. State the precise manner in which you were "... grievously bruised, torn, hurt and injured.", as a result of said automobile accident, including the precise locations and precise descriptions of said bruises, tearings, hurts and injuries.

17. State the precise manner in which you were allegedly disabled from attending to your household duties as a result of said automobile accident, including, without limiting the generality of the foregoing, the precise dates within which you were allegedly disabled from attending to your household duties.

18. Describe with particularity the nature of your alleged household duties at the time you were allegedly disabled from attending to them as a result of said automobile accident.

19. Make an itemized accounting of any extra expenses which you entailed as a result of your alleged inability to attend to your household duties due to said automobile accide

20. State the precise manner in which you allegedly have had to proceed with great pain and difficulty as a resul of said automobile accident.

21. State the dates within which you have allegedly had to proceed with great pain and difficulty as a result of said automobile accident.

22. Describe in detail the nature and precise location of the allegedly severe pains which you suffered and allegedl still suffer in your shoulder and back as a result of said automobile accident.

23. State the frequency and duration of the alleged headaches which you allegedly have as a result of said automobile accident.

24. State the precise manner in which your alleged injuries allegedly resulting from said automobile accident are lasting and permanent.

25. State the precise manner in which you allegedly will continue to suffer from said injuries.

26. List the names and addresses of all doctors, nurses chiropractors, masseurs, and practitioners of the healing arts from whom you have allegedly been required to receive treatment as a result of said automobile accident.

27. Describe with particularity the nature or type and frequency with which you have allegedly been required to take medication as a result of said automobile accident.

28. State the precise nature of the medical care, doctors bills and expenses which you allegedly have required as a result of said automobile accident.

29. State an itemized accounting of all medical bills which you have allegedly been required to pay as a result of said automobile accident, including without limiting the generality of the foregoing, the services rendered for each medical bill.

30. State the total of the medical bills which you have allegedly incurred as a result of said automobile accident

31. State the names and addresses of any persons who were present in your automobile at the time of said automobile accident.

32. State the names and addresses of any persons who were, within your knowledge, eye witnesses to said automobile accident.

33. Describe with particularity the ailments, injuries or physical, mental, emotional or nervous conditions for which you are presently receiving medical treatment or medication.

The defendant has asked the above questions under the statutes of the State of Mississippi, copies of the above interrogatories have been filed with the Clerk of the County Court of Lauderdale County, Mississippi and copies of said interrogatories with notice of filing have been

mailed to Hon. Joe Clay Hamilton, Hamilton and Martin, 909-910 Greater Mississippi Life Building, Meridian, Mississippi, 39301, attorney for the plaintiff.

R. Jess Brown
Alvin J. Bronstein
Malcolm Farmer III

Attorneys for Defendant

CERTIFICATE OF SERVICE

I certify that on this ____ day of March, 1966, I served a copy of the foregoing Interrogatories and Notice of Filing Interrogatories upon Hon. Joseph Clay Hamilton, 909-910 Greater Mississippi Life Building, Meridian, Mississippi, by first class mail, postage prepaid.

_____
Attorney for Defendants

MAR 9 1966

513 25th Avenue
Meridian, Mississippi 39301
March 7, 1966

Mr. Richard Haley
CORE Southern Office
2209 Dryades Street
New Orleans, La. 70113

Dear Mr. Haley:

Enclosed you will find a copy of a County Court writ which was served on the Congress Of Racial Equality and myself by the Lauderdale County Sheriff's office on March 4, 1966. It commands us to be present in Lauderdale County Court on March 14, 1966 to answer to Mrs. Mary Quinn, who is suing us for $9000. damages and court costs. I was given 2 copies of the writ, one for me and one for CORE. One copy is in the hands of Malcolm Farmer of the L.C.D.C. in Jackson, Miss. He said they will take the case.

The suit is a result of an accident that I had with this Mrs. Quinn on December 21, 1965. The car I was driving had no insurance on it. The damages to both cars were very slight. She may have had $25. damage. The car I was driving had between $25. and $35. damages. Just after the accident happened, I asked her if she was hurt in any way, she answered that she was not.

I received a letter from her attorney, a Mr. Joe Clay Hamilton, on January 14, 1966. He suggested that since I was was at fault in the accident, and he represents Mrs. Quinn for personal injuries suffered in the accident, I get my liability insurance carrier in touch with him. On the advice of the L.C.D.C., I went and talked with Mr. Hamilton, telling him that in the first place, Mrs. Quinn was at fault, second, she received no personal injuries, and third, I have no way of paying any damages since I own nothing of any substantial value. I imagine this is when Mr. Hamilton thought of bringing CORE in to the suit, since he knows that I am on CORE's payroll.

Mr. Hamilton suggested that I write CORE and ask if any insurance CORE carried had covered me at the time of the accident. Clora Coleman from the New York office wrote me a letter on February 3, 1966, and explained that CORE carries no insurance that would have covered me at the time I was involved in this accident. A copy of the letter was sent to Mr. Hamilton.

At the time of the accident, I was arrested by Meridian City police for "failure to yeild the right of way". I was convicted of this charge in city court and fined $25.00, even though two witnesses I had were in my car and had testified that they had both seen the light change from red to green before Mrs. Quinn hit me in the intersection, after I had proceeded on a green lite. Mrs. Quinn had one witness, whom the judge decided was of "better quality" than my two witnesses. Incidentally, Mrs. Quinn is white. That's the way things stand right now.

I am wondering if it might not be a good idea to have the title changed on the car that is in my name, so that they would not figure that it was my car and that it could be taken for damages. The car was donated to be used in the Meridian area for Civil Rights perposes.

I imagine you will get in touch with Mr. Farmer of the L.C.D.C. so we will know what to do by next Monday.

For Peace and Freedom

Joe Morse

Joe Morse

cc/ Mr. Carl Rachlin
CORE General Counsel
38 Park Row
New York 38, New York

Mr. Malcolm Farmer
L.C.D.C.
603 North Farish Street
Jackson, Mississippi

March 9, 1966

Herb Callander
48 125th Street
New York, New York

Dear Herb:

I'm in the process of assigning southern chapters to Field Secretaries. I estimate it will take approximately a month to get all the reports.

All the Chevrolets have been turned in. This means we are four cars poorer. When do you plan to fill that gap?

Carl notice

I suppose you are not aware that Joe Morris and CORE are being sued for $9,000 by Mrs. Mary Quinn of Meridian. The suit is in connection with an accident on December 21, 1965, a hearing is set for March 14. I have written Carl of the other present auto problem, a 1965 truck sitting out thirty days in a Jackson, Mississippi garage before being sold for damages. I am frustrated, puzzled, and more than a little angry that nothing seems to be done on this matter as badly as we need cars. Please speak to Carl about this for me.

Carl notice

Under separate cover, I am sending copies of a letter from Robert Hicks of Bogalousa and one from LCDC lawyer, Harris David. This outlines the discrimination in the Bogalousa Housing Authority. I urge that National Office take a direct hand in the complaint procedure using both your access to the press and your contact to the Federal Government.

There is evidence all through the South of the potential for effective action on many issues. More and more, we on staff feel powerless because we have less and less in resources. I would like a comment from you on your expectations—not hopes—of available funds to operate in the South during the next six months. In view of the above, I presume it superfluous to comment on the current financial report of the Southern Office.

Sincerely,

Richard Haley
CORE SOUTHERN OFFICE

RH/lmw
Enclosures

Carl Please return
Herb.

LAWYERS CONSTITUTIONAL DEFENSE COMMITTEE
OF THE AMERICAN CIVIL LIBERTIES UNION
SOUTHERN OFFICE
603 NORTH FARISH STREET, JACKSON, MISSISSIPPI 39202
(601) 948-4191
ALVIN J. BRONSTEIN, STAFF COUNSEL

JUN 20 1966

June 18, 1966

Carl Rachlin, Esq.
General Counsel
CORE
38 Park Row
New York, N. Y.

Re: Mary Quinn v. Joe Morse and CORE

Dear Carl:

After much flack the above matter has been continued to be reset on July 11, 1966. The answers to our interrogatories indicate the following:

1. Plaintiff had no previous injuries to parts of body injured in accident;

2. Plaintiff was a housewife and claims inability to do said duties for 2 weeks, but no extra expenses as a result;

3. Plaintiff claims bruises, soreness, pain in breast, arm, shoulder, neck for a period as a result of accident;

4. Present discomfort - shoulder, neck and back pains, headaches.

5. Plaintiff was treated only by two local doctors (no hospitalization);

6. Plaintiff's medications - nerve pills for two weeks and Anacin;

7. Plaintiff's medical expenses and treatments - examination by doctors - $18.50 bill and $8.00 for drugs - also Anacin and Excedrin.

In light of the above and of the fact that plaintiff will ask for a jury trial, it is my thought that you might like us to try to settle this matter.

LAWYERS CONSTITUTIONAL DEFENSE COMMITTEE
OF THE AMERICAN CIVIL LIBERTIES UNION
SOUTHERN OFFICE
603 NORTH FARISH STREET, JACKSON, MISSISSIPPI 39202
(601) 948-4191
ALVIN J. BRONSTEIN, CHIEF STAFF COUNSEL

ALABAMA OFFICE
31½ Franklin Street
Selma, Alabama 36701
(205) 872-3427
DONALD A. JELINEK
Staff Counsel

LOUISIANA OFFICE
2209 Dryades Street
New Orleans, La.
(504) 523-5197
RICHARD SOBOL
Staff Counsel

February 20, 1967

Carl Rachlin, Esq.
Legal Department
SEDF
150 Nassau Street
New York, N. Y.

Re: Mrs. Mary Quinn v. Joe Morse and CORE

Dear Carl:

Enclosed find a bill for costs in the above matter. Please urge CORE to pay it with appropriate speed.

The present status of the matter follows. I filed motions for a new trial (SOP requirement before appeal) and to vacate the judgment as being excessive on behalf of both Morse and CORE. Thus, the judgment technically is not final at present and will not be until said motions are ruled on. The problem is that they may have been denied without notice, and I would rather lie low than get involved with the court again. Joe's and my contempt convictions are technically on appeal, but there is no record, so we probably will have to serve the time. At any rate, I think things should be left in limbo for the moment.

Appealing the decision is out of the question. CORE would have to put up the amount of the judgment in order to suspend it. Upon affirmance, the judgment would have to be paid out of the amount put up. If the judgment was reduced, the same result would occur. As I told you before, the appeal as to CORE would stand a reasonable chance of succeeding since I do not feel that they showed agency or "scope of employment." Nevertheless, reliance on a rational result is inappropriate in Miss., as you know. My feeling is that an appeal would merely make an uncollectible judgment collectible.

To appeal without suspending the judgment would require at least $500.00 to be posted by CORE to take care of the costs of the transcript, etc. I doubt if CORE can swing same, but if you feel you can, we have 10 days from entry of the final judgment. Said date is long past if the court secretly ruled on our motions, but if it has not done so, it will run from the date of said ruling. Let me know if you want anything done on this aspect.

With best regards,

Mac

Malcolm Farmer III

MFIII:jb

The State of Mississippi,
LAUDERDALE COUNTY,

COUNTY
In ~~Circuit~~ Court
No. A-2873

MRS. MARY QUINN

vs.

JOSEPH MORSE AND CONGRESS OF RACIAL EQUALITY

JUDGMENT RENDERED on the 17th day of JANUARY, 1967

FEES OF _____, Clerk
(Sec. 3934 Miss. Laws of 1948)

(a) For each writ other than those hereinafter mentioned	2	$1.00	2.00
(b) For docketing case, to be charged but once		1.00	1.00
(c) Filing and marking each paper	22	.10	2.20
(d) Entering each appearance of a defendant		.25	
(e) Entering each motion or rule on the docket, and order thereon	13	1.00	13.00
(f) Taking each bond		1.00	
(g) Entering nonsuit		1.00	
(h) Order and copy of rule of reference		.50	
(i) Swearing each witness		.10	
(j) Entering each continuance	9	1.00	9.00
(k) Scire Facias, except against jurors when excused		1.00	
(l) Swearing and empaneling jury in each case	2	.50	1.00
(m) Receiving and entering verdict		.50	.50
(n) Recording each judgment		1.00	1.00
(o) Each subpoena for one witness		1.00	
(p) Each additional name inserted		.10	
(q) Each commission to take depositions		1.00	
(r) Copies of all papers and records of any kind, per 100 words		.25	
(s) Taking Recognizance		.75	
(t) Recording writ		.25	.25
(u) Clerk's mailing affidavit		.75	
(v) Each certificate to witness		.25	
(w) Each separate certificate, except to jurors, required to be under seal		.50	
(x) Enrolling judgment of all courts and for person decree from Chancery Court, for first defendant		1.00	
(y) Each additional defendant		.50	
(z) Taxing cost and certificate		.50	.50
(cc) For filing instructions of court in civil cases		1.00	1.00
Total			$31.45

PLAINTIFF'S WITNESSES AND AMOUNT

Total for Plaintiff

FEES OF _____, Sheriff
(Sec. 1789 Miss Code 1930)

(a) Executing writ or replevin or levying attachment against an absent, absconding or other debtor		$4.00	
(b) Summoning each garnishee		.75	
(c) Serving summons on mesne process, for each defendant		1.50	3.00
(f) Entering each writ in his office		.25	.25
(g) Returning each writ		.25	.25
(i) Summoning each witness		.50	
(l) Taking bonds of every kind, each		.50	
(m) Empaneling each jury	2	.20	.40
(n) _____ miles process service	20	@ .10	2.00
Total Sheriff's Fees			$5.90

OTHER SHERIFFS OR OFFICERS

Total

COSTS IN JUSTICE OF PEACE COURT
See Justice's Fee Bill for reference to law

Fees of _____, J. P.	
Fees of _____, Sheriff	
Fees of _____, Constable	
Total Juror's Fees	
Total Witness Fees	
Total Costs in J. P. Court	

DEFENDANT'S WITNESSES AND AMOUNT

Total for Defendant

RECAPITULATION

Fees of _____, Clerk	$31.45
Jury Tax	3.00
Fees of _____, Sheriff	5.90
Fees of _____, Stenographer	3.00
LIB FEE	1.00
Total costs in J. P. Court	
Total fees of Witnesses for Plaintiff	
Total fees of Witnesses for Defendant	
GRAND TOTAL	$44.35

I certify that the above is a true Bill of Costs, this 17th day of FEBRUARY, 1967

PRESTON P COLEMAN, Clerk

BY: Sue Thompson

NESBITT ROOSEVELT COLLECTION

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION - CAMDEN COUNTY
DOCKET No. C-438-44

RANDOLPH CHEVROLET, INCORPORATED,	:	
Plaintiff,	:	Civil Action
-vs-	:	FINAL JUDGMENT
ROOSEVELT SMITH,	:	
Defendant.	:	

This action coming on to be heard in the presence of Archer, Greiner, Hunter & Read, attorneys for the plaintiff, and Theodore Z. Davis, attorney for the defendant, and the Court having taken proofs by stipulation and in open Court and having considered the arguments of respective counsel and the briefs filed herein, and the Court having advised counsel of its opinion;

It is on this 5th day of December, 1945, ORDERED and ADJUDGED that the defendant Roosevelt Smith and all persons acting under his direction or associated with or acting in concert or combination with him be and they are hereby enjoined and commanded henceforth and forever to desist and refrain:

1. From picketing, loitering or gathering about the premises of the plaintiff at 1739 Haddon Avenue, Camden, New Jersey, or sidewalks adjacent thereto, for the purpose of intimidating or causing the plaintiff to hire or grant employment on the basis of race, creed or color, or on the basis of any quota system founded upon race, creed or color or for the purpose of

LAW OFFICES
ARCHER, GREINER & READ
CAMDEN, NEW JERSEY

intimidating or coercing persons having business with the plaintiff.

2. From intentionally obstructing in any manner whatsoever the normal ingress and egress of customers, prospective customers, employees or business invitees about said premises.

3. From ordering, commanding, directing, assisting or abetting in any manner whatsoever any person or persons who attempt to commit or who commit any of the aforesaid acts.

It is FURTHER ORDERED that nothing stated in this Order is to be construed to limit the defendant or any persons associated with him from picketing in a peaceful manner with signs properly seeking to make the public aware of the right of Negroes for equal opportunity for jobs, housing or other civil rights; provided that not more than five (5) pickets at any one time may engage in such activity adjacent to the new car establishment of the plaintiff and not more than the same number at the used car establishment of the plaintiff and further provided that they or any of them do not obstruct the entrances and exits from said premises and that none of said pickets shall be under the age of fifteen (15) years.

s/ John B. Hutchins
J.S.C.

The undersigned hereby consent to the form of the foregoing Judgment.

ARCHER, GREINER, HEWITT & READ
Attorneys for Plaintiff

By _____
John F. Kenah, Jr.

_____
Theodore E. Davis
Attorney for Defendant

LAW OFFICES
ARCHER, GREINER, HEWITT & READ
CAMDEN, NEW JERSEY

File

November 29, 1965

John P. Hauch, Jr., Esq.
518 Market Street
Camden, New Jersey

Theodore X. Davis, Esq.
709 Market Street
Camden, New Jersey

Re: Randolph Chevrolet v. Neswith
Docket No. C-458-64 Camden Co.

Gentlemen:

Plaintiff by complaint says that on March 20, 1964 and various other dates thereafter the defendant and others working in consort therewith, picketed the premises of the plaintiff in the general business of selling and servicing of automobiles at its place of business 1759 Haddon Avenue, in the City of Camden, carrying signs saying: "Do Not Deal at Randolph Chev."..."We Want Negro Salesmen and Office Help"..."Negro Window Washers Not Enough"..."Wanted-Negro Buyers - Not Wanted - Negro Salesmen or Office Workers Due to Discrimination"..."We Want Workers in All Departments"..."We Want Office Workers"..."We Want Negro Salesmen"..."Want Negro Salesmen Now"... "We Want Negros Upgraded", in groups varying from five to as many as fifty persons. As well at various times a number of persons have gone into the showroom, sat in the cars blowing the horns, turning on the lights, rolling up the windows and locking themselves in the cars, refusing to open them, turning on and leaving on the equipment including windshield wipers and radios and have failed to leave when requested.

The picketing activity hereinbefore mentioned has likewise taken place on September 2, 9, 16, 18, 23 and 24, 1964 for periods varying from 7:00 o'clock p.m. to 8:30 and as late as 9:00 o'clock p.m. Plaintiff complains that these actions have caused substantial damage to its business and seeks a restraining order enjoining such conduct.

The defendant admits to his physical presence, the presence of others at the times alleged and the carrying of the signs containing the legends above quoted but denies the purpose is illegal.

The Court is mindful of the fact that the plaintiff is entitled to protect its business interests as well as the fact that the defendant and persons acting in conjunction therewith have certain rights under

the Federal and State Constitutions and the laws implementing the same respecting their civil rights. From the legends on the signs hereinbefore mentioned, it would appear that the defendants have exceeded their civil rights to protest discrimination in that they are attempting by the choice of words to impute illegal acts upon the plaintiff. In so doing the defendant and his constituents are doing an illegal act and one which under Hughes v. Superior Court, 339 U.S. 460 (1950) the State has the power to restrict.

Our State Constitution Art. 1, par. 5 and the implementing laws N.J.R.S. 18:25-4 give the defendant the right to picket for legal purposes and this Court upholds the defendant's right so to do, which extended further means that he and others have the right to picket in a peaceful manner with signs properly seeking to make the public aware of the right of negros for equal opportunity for either jobs, housing, or other civil rights.

It is hoped that in the preparation of the final judgment herein that the attorneys for the respective parties will spell out in more detail specific language which will dispose of the matter in dispute herein and if they can agree upon any other matters in connection herewith to minimize possible friction, it will be much appreciated by this Court.

Very truly yours,

John B. Wick

JBW:mha

LAW OFFICES
THEODORE Z. DAVIS
709 MARKET STREET
CAMDEN, NEW JERSEY
08102

TELEPHONE
963-2080
AREA CODE 609

January 17, 1966

JAN 19 1966

Carl Rochlin, Esquire
38 Park Row (CORE)
New York, New York

Morton Jacobs, Esquire
1420 Walnut Street (ACLU)
Philadelphia, Pennsylvania

Charles G. Thomas
25 S. 5th Street (ACLU)
Camden, New Jersey

In re: Randolph Chevrolet
vs: Roosevelt Nesmith, et al

Gentlemen:

Mr. Roosevelt Nesmith has informed me that he had spoken to several of you and that you had mentioned other parties who had expressed an interest or who may be interested in the status of the above captioned case.

1. As the result of picketing the premises of the plaintiff, a preliminary restraining order was granted restraining all picketing until the final hearing.

2. At the final hearing, it was decided that the defendant and those associated with him could not be enjoined from peaceably picketing the plaintiff's place of business, but that certain legends on the signs carried by the defendant were improper. This point was argued, but the Judge felt that these particular signs required the plaintiff to employ on the basis of race, creed or color. (A copy of opinion is enclosed).

3. Before final judgment was entered, defendant Nesmith started picketing again. Contempt was requested but no fine was imposed. Verbal request from the bench was all that was done.

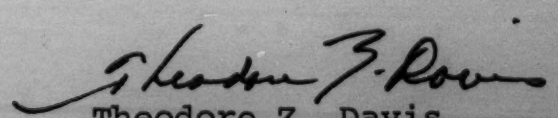
4. After final judgment was entered (December 8, 1965), Nesmith picketed by carrying a sign reading "Want Negro Salesmen now".

5. Supplemental relief was requested by plaintiff by way of contempt. The agreement again was advanced that the lack of salesman of the Negro race was CORE'S prime grievance and that to eliminate this sign would be an unconstitutional infringement upon defendant's freedom of speech. For if this sign was eliminated, the public would not be properly informed of the grievance. It was further argued that the sign does not request employment on a quota basis and neither does the sign give forth such inference. The ruling, however, was to the contrary, wherefore, Nesmith was held in contempt and fined $25.00.

A question of appeal has been raised by Mr. Nesmith and I agree with him wholeheartedly. However, I have spent a great deal of time on this matter without compensation and it would be difficult for me to further extend myself without being unfair to the other members of our office.

I would appreciate additional comments.

Cordially yours,



Theodore Z. Davis

TZD ss
enclosures

cc: Roosevelt Nesmith

[1966]

January 19, 1965

Theodore Z. Davis, Esq.
709 Market Street
Camden, New Jersey 08102

RE: Randolph Chevrolet vs. Roosevelt Nesmith, et al

Dear Mr. Davis:

Thank you for your letter of the 17th. I am of the opinion that holding Mr. Nesmith in contempt violates his freedom of speech. While there has been a United States Supreme Court decision making it illegal to demand quota hiring, this in my view does not apply to a request to employ Negroes, so long as you are not demanding, as they did in the case in California, that the employees be 50% Negro because 50% of the customers were Negro. The theory is that we cannot force the discharge of any current employees in order to employ Negroes.

Regardless of the merits of that argument, and it is my view that the United States Supreme Court will reconsider its decision in that case, merely asking for employment of Negroes in no way violates the propositions set forth there. Obviously, we would be glad to work on any briefs used for appeals if you would care to have us do this.

Sincerely,

CARL RACHLIN
General Counsel

CR/es

cc: Norton Jacobs, Esq.
Charles G. Thomas, Esq.

Make a new file

Filed 11/2/65 U.S.D.C.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

GEORGE RAYMOND, PLAINTIFF V. LAURIS G. SESSUMS, individually and as Town Marshal of the City of Morton, Mississippi, and F. T. McGOUGH, individually and as Mayor of the City of Morton, Mississippi, DEFENDANTS	CIVIL ACTION NO. 3841

COMPLAINT

Jurisdiction

1. This is a civil action brought by plaintiff to obtain redress for deprivation by defendants of plaintiff's rights, privileges and immunities secured by the Constitution and laws of the United States.

2. Jurisdiction is conferred upon this court by 42 U.S.C. 1983, 1985 and 1986 and 28 U.S.C. 1343.

Parties

3. Plaintiff is a Negro citizen of the United States and the State of Mississippi and now resides in Madison County, Mississippi, and has been an active participant in the movement to obtain equal rights, including voting rights, for Negroes in said county.

4. Defendant Lauris G. Sessums is Town Marshal of the City of Morton, Scott County.

5. Defendant F. T. McGough was at all times pertinent hereto Mayor of the City of Morton. His term expired on or about July 6, 1965.

Claim

6. On June 16, 1965 at high noon, plaintiff, in company with fifteen or twenty citizens of Scott County and the surrounding neighborhood, peacefully was proceeding along the dirt shoulder of highway 13, in the City of Morton, their destination being the Gulf Cafe on U.S. highway 80, a place of public accommodation as defined by section 201 of the Civil Rights Act of 1964, 78 Stat. 243. Neither plaintiff nor those accompanying him were disorderly or tumultuous, nor did they obstruct or interfere with pedestrian or vehicular traffic, and were then and there engaged in conduct protected by the Constitution of the United States and the Civil Rights Act of 1964.

7. At approximately fifty feet from the intersection of said highway 13 and U. S. highway 80, defendant Sessums in a police car pulled into highway 13 accompanied by an unknown civilian in an unmarked light blue Oldsmobile. Defendant Sessums, without ordering the group to disperse or placing them under arrest, commenced forthwith to beat plaintiff with a large club or ax handle, shout curses and, "Who told you-all you could parade?" or words to that effect. Plaintiff offered no resistance to defendant and retreated before his repeated blows

8. Said unknown individual in civilian clothes meanwhile had posted himself in close proximity from which position he covered plaintiff and the others with a shotgun.

9. As defendant Sessums continued to strike plaintiff with his club, plaintiff fled, whereupon defendant drew his revolver and fired four or five shots. The defendant then gave pursuit in the police car to the church on highway 13 in which the group had taken refuge in order to avoid being shot. As defendant Sessums approached the church on foot, with pistol drawn, accompanied by the unknown man with a shotgun, plaintiff emerged and was placed under arrest, handcuffed and taken to the

city jail of the City of Morton, where he was again beaten by defendant Sessums and placed in a cell.

10. Defendant F. T. McGough, acting under color of authority as Mayor of Morton, and in conspiracy and concert with defendant Sessums held plaintiff in $275.00 bail on charges of parading without a permit, disturbing the peace and resisting arrest, and plaintiff was required to furnish said bail in order to obtain his freedom.

11. Subsequently an affidavit charging plaintiff with said offenses was sworn to by one W. L. Bates before defendant F. T. McGough. A Nolle Prosequi was entered at a later date in this criminal action.

12. At all times herein defendants were acting in their official capacity as, respectively, Town Marshal and Mayor of the City of Morton, under color of authority vested in them by virtue of said offices and by virtue of and under color of statutes, ordinances, customs and usages of the City of Morton and the State of Mississippi.

13. At all times herein plaintiff's conduct was lawful and he was at all times in the exercise of rights guaranteed to him by the Constitution of the United States and, specifically, by Section 201 of the Civil Rights Act of 1964.

14. Defendant Sessums because of malice and racial antipathy towards plaintiff and in order to harass plaintiff and punish him for the exercise of his rights:

(a) unlawfully interfered with and obstructed plaintiff's right to peaceably proceed on a public thoroughfare;

(b) unlawfully and maliciously obstructed and interfered with plaintiff's attempt to exercise a right guaranteed under section 201 of the Civil Rights Act of 1964, in violation of section 203 of said Act;

(c) unlawfully and maliciously assaulted plaintiff and committed a battery upon him with a weapon, to wit, an axe handle or club;

(d) unlawfully and maliciously committed assault with a deadly weapon upon plaintiff;

(e) falsely arrested and falsely imprisoned plaintiff;

(f) participated in the bringing of false charges against plaintiff.

15. In all said acts defendant Sessums operated under the direction and control and was executing the policies of defendant Mayor F. T. McGough.

16. By reason of the unlawful and malicious acts of defendants, plaintiff has been made to suffer physical pain and damage,

WHEREFORE, Plaintiff prays damages against defendants, jointly and severally, in the amount of One Hundred Thousand ($100,000.00) dollars with costs.

R. Jess Brown
Henry W. Sawyer III
Alvin J. Bronstein

603 N. Farish Street
Jackson, Mississippi

Attorneys for Plaintiff

[illegible] VS. MULKEY, LINCOLN, W. [illegible] NE [illegible]
(VIOLATION)

Please Retain Original Order

Given, please make a file for this case & put my long letter to Robison in it (proposition 14)

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1966

No. 483

NEIL REITMAN, et al., and CLARENCE SNYDER,

Petitioners,

vs.

LINCOLN W. MULKEY, et al., and WILFRED J. PRENDERGAST and CAROLA EVA PRENDERGAST,

Respondents.

On Writ of Certiorari to the Supreme Court of the State of California.

BRIEF OF

NATIONAL COMMITTEE AGAINST DISCRIMINATION IN HOUSING, AMICUS CURIAE

The two proceedings before this Court on writ of certiorari to the California Supreme Court present the single question whether a provision recently added to the California Constitution violates the Fourteenth Amendment to the United States Constitution. In each case, it was asserted that the owner of housing accommodations had violated a California statute prohibiting discrimination in the sale or rental of housing on the basis of race, religion or national origin. In each case, the owner asserted that the statute had been invalidated by a clause added to the California Constitution by action of the voters on Election Day in 1964. The operative part of the clause, which is now Article I, Section 26 of the California Constitution, reads as follows:

can state tell him who he must sell to - even tho it can not tell him who he can decline

> Neither the State nor any subdivision or agency thereof shall deny, limit or abridge, directly or indirectly, the right of any person, who is willing or desires to sell, lease or rent any part or all of his real property, to decline to sell, lease or rent such property to such person or persons as he, in his absolute discretion, chooses.

The Supreme Court of California, on May 10, 1966, issued its decisions in these cases holding that Article I, Section 26, violated the Equal Protection Clause of the Fourteenth Amendment.

Interest of the Amicus

This brief is filed, with the consent of the parties, on behalf of the National Committee Against Discrimination in Housing. (Description to be inserted.)

The National Committee submits this brief because Article I, Section 26 represents, in California, and in all other states, the most potent device for maintaining racial segregation in housing. It must be remembered that the language of Article I, Section 26 is general and unqualified. No effort is made to catalogue the considerations which the amendment would immunize against state regulation or prohibition in a landowner's determination to withhold property from particular individuals. Rather, by vesting "absolute discretion" in the property owner with respect to the disposition of his property, the amendment attempts to extend state constitutional protection to both reasonable and unreasonable motivations, ethical and unethical considerations, licit and illicit reasons for selecting and rejecting willing buyers and renters.

The major impact of the amendment falls only upon members of minority groups. A constitutional amendment was not needed to permit property owners to withhold a leasehold from lessees with pets, to withhold property in a senior citizens community from purchasers who do not meet an age requirement,

Mulkey v. Reitman, 64 Cal. 2d 529, 413 P. 2d 825; Prendergast v. Snyder, 64 Cal. 2d 877, 413 P. 2d 847.

or to withhold property for any number of considerations under commonly accepted tenets of desirable social and economic behavior. However, in recent years the withholding of real property on purely racial or religious grounds has been made the occasion for legal redress in California, and there is little doubt that Article I, Section 26 was proposed and passed for the precise objective of granting and guaranteeing the right to discriminate on racial and religious grounds in the selling and leasing of real property.

The language of the amendment achieves that purpose. Under the "absolute discretion" phraseology, a Mexican seeking a home for his family in Los Angeles may be turned away because of his national origin by an owner whose house is on the market; a Japanese farmer may be denied farmland in the San Joaquin Valley because he is not Caucasian; a Negro in San Francisco may be told that he cannot rent an apartment because of the color of his skin. In those intances, the amendment undeniably would sanction discrimination.

It is the position of Amicus that Article I, Section 26 of the California Constitution, by granting the protection of law to those who discriminate against minority citizens seeking to acquire property interests, by withholding redress of law from those who suffer such discrimination, and by arbitrarily precluding the effective exercise of state power to regulate discrimination in the transfer of real property, is in direct conflict with the Fourteenth Amendment of the United States Constitution.

Question to Which This Brief is Addressed

(To be done.)

SUMMARY OF ARGUMENT

(To be done.)

ARGUMENT

POINT ONE

THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT BARS A STATE FROM DISABLING ITSELF FROM DEALING WITH THE ACKNOWLEDGED UNEQUAL EFFECTS OF DISCRIMINATION IN HOUSING AGAINST MINORITY GROUPS.

A. The existence of racial discrimination in housing in California...

The ghetto pattern that disfigures residential areas throughout the United States, including California, has been revealed in every study made of the subject, whether by public agencies or by private institutions. It means, in practice, that almost every housing unit placed on the market, for sale or rental, for slum dwellers or for millionaires, bears an invisible label marking it as available for whites only or for Negroes only.

In 1961, the U. S. Commission on Civil Rights observed:[1]

> In 1959 the Commission found that "housing ... seems to be the one commodity in the American market that is not freely available on equal terms to everyone who can afford to pay." Today, 2 years later, the situation is not noticeably better.
>
> Throughout the country large groups of American citizens -- mainly Negroes, but other minorities too -- are denied an equal opportunity to choose where they will live. Much of the housing market is closed to them for reasons unrelated to their personal worth or ability to pay. New housing, by and large, is available only to whites. And in the restricted market that is open to them, Negroes generally must pay more for equivalent housing than do the favored majority. "The dollar in a dark hand" does not "have the same purchasing power as a dollar in a white hand."

And the California Advisory Committee to the U. S. Commission on Civil Rights has reported:[2]

> The State of California has a large and increasing Negro population. These people live mainly in segregated patterns in the major urban centers of the State. In most cases, Negro housing areas are considerably less attractive than housing in other areas.
>
> * * * * *
>
> As California's Negro population increases, pressure builds up in the great urban ghettos, and slowly but perceptibly the segregated areas enlarge. The Committee found that, as a general rule, Negro families do not move individually throughout the community. They move as a group. This is true in most cases of the relatively high-wage Negro professional group. It is practically universally true of Negroes in the lower mass group.

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[1] Report of the U. S. Commission on Civil Rights, Book 4, Housing, p. 1 (1961). See, also, Report of the President's Committee on Civil Rights, To Secure These Rights, pp. 67-70 (1947); Myrdal, An American Dilemma, pp. 618-27 (1944); Weaver, The Negro Ghetto (1948); Abrams, Forbidden Neighbors, pp. 70-81, 137-49, 150-190, 227-243 (1955); Commission on Race and Housing, Where Shall We Live?, pp. 1-10 (1958); Report of the U. S. Commission on Civil Rights, pp. 336-374 (1959).

[2] U. S. Commission on Civil Rights, "50 States Report", pp. 43-46 (1961).

> This Negro housing problem is widespread. Negroes encounter discrimination not only where houses in subdivisions and in white neighborhoods are concerned but also in regard to trailer parks and motels. Testimony received by the Committee indicated that the trailer-park situation is particularly acute and that, especially in the southern part of the State, few, if any, trailer parks will accept Negroes. /

Unquestionably there is an established pattern of segregation in housing, and in the sale and rental of real estate, in California.

B. The Harmful Effects of Residential Segregation in California.

Because of the pervasive nature of discrimination in housing, we have in effect two housing markets, one for whites and one for non-whites. The resulting oppressive effects on the direct victims of discrimination and on the interests of the state as a whole are readily demonstrated.

1. The most obvious price paid by those who are discriminated against is a loss of freedom. "The opportunity to compete for the housing of one's choice is crucial to both equality and freedom," declares the Commission on Race and Housing. /

/ The existence of housing bias in California's two principal metropolitan areas is further documented in McEntire, Residence and Race (1960), in a chapter (pp. 32-67) studying residential patterns in 12 large cities representing the major regions of the country, including Los Angeles and San Francisco. See particularly the maps showing racial concentration in those two cities, pp. 61-66.

/ Report of Commission on Race and Housing, Where Shall We Live?, p. 3 (1958).

Within their financial limits, majority groups in America are free to choose their homes on the basis of a number of factors germane to their pursuit of happiness; the size of house needed to accommodate the family; preferences for particular styles of housing or kinds of neighborhoods; the availability of community facilities such as churches, schools, playgrounds, clubs, shopping, and transportation.

This freedom of choice is denied members of minority groups. Granted the means, a non-white person may buy an automobile, any furniture, any clothing, any food, any article of luxury offered for sale. But it is not possible for a non-white American to bargain freely, in an open, competitive market, for the home of his choice, regardless of his intellect, integrity or wealth.

The U. S. Commission on Civil Rights, referring to the "White noose around the city," has said: /

> There may be relatively few Negroes able to afford a home in the suburbs, and only some of these would want such homes, but the fact is that this alternative is generally closed to them. It is this shutting of the door of opportunity open to other Americans, this confinement behind invisible lines, that makes Negroes call their residential areas a ghetto.

Housing discrimination also abridges the right of the majority group owner freely to sell or rent his property. The mechanics of the dual, segregated housing market restrict the universe within which the white seller may find prospective purchasers. For practical purposes he may offer his house to whites or to Negroes, but not to both.

/ Commission on Race and Housing, 1959 Report, p. 278.

2. Housing discrimination imposes a heavy economic penalty on the Negro. As the U. S. Commission on Civil Rights pointed out in the portion of its 1961 Report quoted above, "Negroes generally must pay more for equivalent housing than do the favored majority." _/ This is because the discriminatory practices that hold down the supply of housing available to Negroes inevitably raise the price or rent they must pay.

McEntire, after reviewing all past studies as well as those conducted for the Commission on Race and Housing, concluded: _/

> Racial differences in the relation of housing equality and space to rent or value can be briefly summarized. As of 1950, nonwhite households, both renters and owners, obtained a poorer quality of housing than did whites at all levels of rent or value, in all regions of the country. Nonwhite homeowners had better quality dwellings than renters and approached more closely to the white standard, but a significant differential persisted, nevertheless, in most metropolitan areas and value classes.....

3. Other, less tangible, injuries are inflicted on the victims of discrimination in housing, with resultant evil effects on the state itself. _/ "All of our community institutions reflect the pattern of housing," the president of the Protestant Council of New York has stated. "It is indescribable, the amount of frustration and bitterness, sometimes carefully shielded, but the anger and resentment in these areas can scarcely be overestimated and can hardly be described; and this kind of bitterness is bound to seep, as it has already seeped, but increasingly, into our whole body politic." He said he could "think of nothing that is more dangerous to the nation's health, moral health as well as physical health, than the matter of these ghettos." _/

_/ Similarly, the Commission on Race and Housing, in its Report, Where Shall We Live? (1958), p. 36, said: "...segregated groups receive less housing value for their dollars spent than do whites, by a wide margin."

_/ Op. cit. supra, p. 155.

_/ See, in particular, Clark, Prejudice and Your Child (1955), pp. 39-40.

_/ U. S. Commission on Civil Rights, 1959 Report, p. 391.

Residential discrimination and segregation impede the social progress and job opportunities of minority groups, and deprive the whole community of the contributions these Americans might otherwise make. It is questionable whether we can fully comprehend the enormous harm to the individual and to the community in terms of waste of human and economic resources.

4. Perhaps the most notorious effect of the ghetto system is its creation of slums, with all their attendant evils -- to the slum dweller and to the public weal. As we have seen, housing bias compels non-white groups to live in the restricted areas available to them. The California Supreme Court summarized the results as follows in Burks v. Poppy Construction Co., 57 Cal. 2d 463, 471 (1962):

> Discrimination in housing leads to lack of adequate housing for minority groups [citations omitted], and inadequate housing conditions contribute to disease, crime, and immorality.

~~Thus,~~ In 1959, the U. S. Commission on Civil Rights described the effects of residential discrimination as follows: "The effect of slums, discrimination and inequalities is more slums, discrimination and inequalities. Prejudice feeds on the conditions caused by prejudice. Restricted slum living produces demoralized human beings -- and their demoralization then becomes a reason for 'keeping them in their place'... Not only are children denied opportunities but the city and nation are deprived of their talents and productive power." The Commission reported that a former Secretary of Health, Education, and Welfare estimated the national economic loss at 30 million dollars a year, representing the diminution in productive power of those who by virtue of the inferior status imposed upon them were unable to produce their full potential.[1]

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[1] U.S. Commission on Civil Rights, 1959 Report, p. 392; Commission on Race and Housing, op. cit. supra, pp.5, 36-38; Groner & Helfeld, Race Discrimination in Housing, 57 Yale L.J. 426,428-9 (1948).

Two years later, the Commission reiterated its conclusion and added: "These problems are not limited to any one region of the country, They are nationwide and their implications are manifold..." _/

5. The racial patterns of the slums resulting from housing bias severely distort programs of slum clearance and urban renewal. The price paid for these civic improvements, in terms of forced moves and disrupted lives, is often borne most heavily by the minority families that live in the cleared areas.

The problem has been fully described by the U. S. Commission on Civil Rights. _/ It points out that minorities are frequently the principal inhabitants of the areas selected for slum clearance or urban renewal. _/ But each of these programs depends for success on the ability to relocate some or all of the slum dwellers. Urban renewal obviously contemplates the destruction of obsolete slum buildings, and these residents must of course move. ~~And~~ If they are simply moved to another segregated area, adding to its population densities, a new slum is created. In those circumstances, the renewal program represents much motion but little movement.

_/ U. S. Commission on Civil Rights, 1961 Report, Book 4, "Housing," p. 1. See also McEntire, op. cit. supra, pp. 93-94.

_/ U. S. Commission on Civil Rights, 1961 Report, Book 4, "Housing," c. 4. "Urban Renewal," especially pp. 82-83. See also Commission on Race and Housing, op. cit. supra, pp. 37-40.

_/ From the beginning of the Federal urban renewal program in 1949 up to 1960, slum clearance and urban renewal projects had relocated 85,000 families. Of the 61,200 families whose color is known, 69% were non-white. Housing & Home Finance Agency, Relocation from Urban Renewal Project Areas through June 1960, p. 7 (1961).

As Albert M. Cole, former Federal Housing and Home Finance Administrator, has said: /

> Regardless of what measures are provided or developed to clear slums and meet low-income housing needs, the critical factor in the situation which must be met is the fact of racial exclusion from the greater and better part of our housing supply..... No program of housing or urban improvement, however well conceived, well financed, or comprehensive, can hope to make more than indifferent progress until we open up adequate opportunities to minority families for decent housing.

The California Advisory Committee to the U. S. Commission on Civil Rights discovered these phenomena in full effect in that state, with clearly visible harm to the Negro population. It reported: /

> The Committee found that concentration of Negro families into certain specified areas within California cities seems to be augmented, rather than alleviated, by urban renewal projects. It appears that Negroes displaced by such projects tend to find alternative housing in pre-existing Negro sections. There seems to be little effort to guide displaced families in thier selection of homesites. The project moves forward and Negro families, along with other groups, must quickly find new homes. More often than not, these Negro families settle in adjacent ghettos already in existence.
>
> As the proportion of minority group members is extremely high in the so-called "blighted areas" of our State's larger cities, this is a major problem for those concerned with civil rights and minority housing.

/ "What is the Federal Government's Role in Housing?" Address to the Economic Club of Detroit, Feb. 8, 1954, quoted in Report of the Commission on Race and Housing, Where Shall We Live?, p. 40 (1958).

/ 50 States Report, supra, p. 45.

6. The harmful effects of residential segregation are not limited to housing. A conspicuous feature of the ghetto system is its tendency to produce segregation in education and all other aspects of our daily lives. / It is primarily responsible for the wide-spread segregation that hampers Negroes and persons of Puerto Rican and Mexican origin in urban public schools. / It has even impaired the job opportunities opened up by fair employment laws. /

One of the most disturbing features of the physical pattern of segregation, whether in housing or otherwise, is that it builds the attitudes of racial prejudice which, in turn, strengthen the segregated conduct patterns. This was recognized ~~almost~~ two decades ago by a Presidential Committee: /

/ Myrdal, An American Dilemma, p. 618 (1944); Commission on Race and Housing, op. cit. supra, pp. 35-36.

/ Maslow, De Facto Public School Segregation, 6 Vill. L. Rev. 353, 354-5 (1961). In its 1959 Report the U. S. Commission on Civil Rights said (at p. 545): "The fundamental interrelationships among the subjects of voting, education, and housing make it impossible for the problem to be solved by the improvement of any one factor alone." See also pp. 389-90.

/ N. Y. State Commission Against Discrimination, In Search of Housing, A Study of Experiences of Negro Professional and Technical Personnel in New York State (1959).

/ Report of the President's Committee on Civil Rights, To Secure These Rights, pp. 82-7 (1947).

For these experiences demonstrate that segregation is an obstacle to establishing harmonious relationships among groups. They prove that where the artificial barriers which divide people and groups from one another are broken, tension and conflict begin to be replaced by cooperative effort and an environment in which civil rights can thrive. _/

_/ The impact of housing discrimination is not limited to citizens of our country. The California Advisory Committee to the U. S. Commission on Civil Rights confirms this:

> "Discrimination in housing directed against Negroes has had an unfortunate impact on foreign students whose skin colors are dark. The Committee heard testimony from an Indian student at Sacramento State College who indicated that he had been refused accommodations in a number of instances because of his color. The testimony of student government leaders at the same school indicated that this foreign student problem is significant. Commendably, student groups at Sacramento State are trying to do something about this situation through investigation and conference.
>
> "The Committee is very disturbed by the evident impact of discriminatory treatment on foreign students whose preconceptions about American democracy have been rudely upset. These students are potential leaders in their own countries and the image of America which they take back with them can be significantly tarnished by such experiences." 50 States Report, supra p. 46.

7. All the evils discussed above combine to create the gravest danger of all to the security of society -- the ever present threat of violent race conflict. Virtually every instance of such violence in the last two decades -- outside of the South -- has reflected the ghetto system. It has arisen either out of efforts by Negro families to move into previously all white areas or out of the tensions that build up within the ghetto. It is enough to remind this Court of the riots of 1965 in the Watts and other Negro districts of Los Angeles that caused the loss of lives and damages estimated at $. It is perhaps unnecessary to point out that California would not have had a Watts riot if it had not had a Watts in the first place.

C. The State of California has recognized the existence and harmful effects of racial discrimination in housing by enacting anti-discrimination legislation.

The State of California has given formal recognition to the existence and evil effects of discrimination based on race, religion or national origin by the enactment of anti-bias legislation. It is true that, as we note below, its policy has been far from consistent, particularly in housing. At times, in fact, its laws have affirmatively facilitated and even required discrimination. In recent years, however, until the approval of Article I, Section 26 by referendum, California has recognized reality by moving progressively to curb the ghetto system.

McCone report. (To be done.)

In 1959, California enacted a measure known as the "Hawkins Act" which prohibited discrimination in "publicly assisted housing accommodations."[1] In the same year, it adopted the "Unruh Act" which revised its law dealing with places of public accommodation to make it applicable to "all business establishments of every kind whatsoever."[2] This law was subsequently held to apply to those in the business of selling or leasing residential housing.[3]

In 1963, California enacted the measure popularly known as the "Rumford Act," which added sections 35700-35744 to the Health and Safety Code[4] and replaced the provisions of the "Hawkins Act." The Rumford Act was broader than the Hawkins Act in covering, inter alia, residential housing containing more than four units, even though not publicly assisted. In addition, the Legislature vested the exclusive authority to administer the Rumford Act in the Fair Employment Practice Commission. The legislative policy which the Rumford Act implemented is expressed ~~in its provision~~ as follows (Health & Safety Code, sec. 35700):

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[1] Cal. Stats. 1959, c. 1681, pp. 4074-7, Health and Safety Code, sections 35700-35741.

[2] Cal. Stats. 1959, c. 1866, p. 4424, Civil Code, Secs. 51-52.

[3] Lee v. O'Hara, 57 Cal. 2d 476, 370 P. 2d 321 (1962) (real estate brokers); Burks v. Poppy Construction Co., 57 Cal. 2d 463 (1962) (developer of a tract of single family homes).

[3] ~~Recognition by the State of California of its obligation to prevent racial discrimination may also be seen in the decisions of its courts, including James v. Marinship Corp., 25 Cal. 2d 721 (1944), Williams v. Boilermakers, 27 Cal. 2d 586 (1946).~~

[4] Cal. Stats. 1963, c.1853, Sec.2, ~~px~~ p. 3823.

> The practice of discrimination because of race, color, religion, national origin, or ancestry in housing accommodations is declared to be against public policy.
>
> This part shall be deemed an exercise of the police power of the State for the protection of the welfare, health, and peace of the people of this State.

The existence and evil effects of discrimination in housing have been recognized not only by the legislative branch of the state government but also by its judicial branch. Burks v. Poppy Construction Co., 57 Cal. 2d 463, 471 (1962); Jackson v. Passadena City School District, 59 Cal. 2d 876, 881 (1963).

D. The Fourteenth Amendment Probhibits California from Disabling Itself from Fulfilling its Constitutional Responsiblity to Prevent Inequality in Housing

Article I, Section 27, if valid, would disable the state and local legislative bodies of California from acting to prevent discrimination in housing. It would also preclude the state judiciary from developing and applying common law principles that limit such discrimination in any manner. At one stroke, it would undo all existing state regulation in this field, prohibit future action at any level of state government and assure to private persons the power to create and control the discriminatory housing conditions that contribute to many of California's serious social problems. We suggest that the strictures of the Fourteenth Amendment cannot be so easily avoided in matters of governmental responsibility.

Does new amdt. would affect Church Act? Can a state legislature be prevented by fed. law?

The purpose of the Fourteenth Amendment was to protect the rights of minority groups with respect to activities in which, under our political system, the state is expected to play a role. When this Court originally construed that Amendment as dealing only with "state action," it did so on the assumption that the states would act appropriately to prevent abuse of their legal systems so as to permit denials of equal opportunity. Thus, in the Civil Rights Cases, 109 U.S. 3 (1883), where it held that the Federal Government did not have power to prohibit discrimination by private parties in operating places of public accommodation, it proceeded on the assumption that individual rights "may presumably be vindicated by resort to the laws of the State for redress" (109 U.S. at 17). It said (at 19):

> We have discussed the question presented by the law on the assumption that a right to enjoy equal accommodation and privileges in all inns, public conveyances, and places of public amusement, is one of the essential rights of the citizen which no State can abridge or interfere with. Whether it is such a right, or not, is a different question which, in the view we have taken of the validity of the law on the ground already stated, it is not necessary to examine.

It also said (at 25):

> Innkeepers and public carriers, by the laws of all the States, so far as we are aware, are bound, to the extent of their facilities, to furnish proper accommodation to all unobjectionable persons who in good faith apply for them.

Please

In short, our federal system of government posits a responsibility on the part of the states to prevent inequality through protection of individual rights. That responsibility, like "state action," is an expanding concept. Governmental responsibility generally has necessarily grown with the proliferation of complex problems in contemporary life. State and individual have more points of contact today than in years gone by. In the same way, the need for state action to insure equality in basic rights has grown. To fulfill the Fourteenth Amendment's promise of equal protection of the laws, the power of the state to carry out its role must remain unimpaired.

As we have shown above (pp.), California is scarred by minority group ghettoes that cause severely harmful effects both for the minority groups affected and for the public at large. Those evil effects have been highlighted by the tragic events of the Watts riots of 1965 and by the official report on its causes and consequences. With these known facts in mind, the necessity for at least the availability of the corrective police power of the state cannot be denied.

In purporting to preclude exercise of that remedial power by adopting Article I, Section 26, California has done what this Court has said it may not do:

> No legislature can bargain away the public health or the public morals. The people themselves cannot do it, much less their servants. The supervision of both these subjects of governmental power is continuing in its nature, and they are to be dealt with as the special exigencies of the moment may require. Government is organized with a view to their preservation, and cannot devest (sic) itself of the power to provide for them. For this purpose the legislative discretion is allowed, and the discretion cannot be parted with any more than the power itself. (Emphasis added.)

~~(To be done.)~~

Second Slaughter House Case, Butchers' Union Co. v. Crescent City Co., 111 U.S. 746, 753 (1883). See also Home Bldg. & Loan Assoc. v. Blaisdell, 290 U.S. 398, 442, 444 (1934).

The unconstitutionality of the instant disablement is further demonstrated by analogy to other illegal disablements of fundamental power. For example a state cannot disable its courts from hearing and granting relief on federal causes of action. Testa v. Katt, 330 U.S. 386 (1947). A government cannot disable its courts, even in a wartime emergency, from considering a defense in a criminal case that the law being enforced is invalid, unless an alternative and effective procedure for reviewing the validity of the law is available to the defendant. Yakus v. United States, 321 U.S. 414 (1944). Similarly, it is extremely doubtful that courts could be disabled from exercising the power to issue writs of habeas corpus in appropriate cases. See Eisentrager v. Forrestal, 174 F.2d 961, 965-966 (1949), reversed on other grounds, 339 U.S. 765 (1950).

POINT TWO

ARTICLE I, SECTION 26 VIOLATES THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT BY LEGALIZING RACIAL DISCRIMINATION IN HOUSING.

A. Article I, Section 26 places the legal system of California in support of racial discrimination in housing.

The decisions of this Court establish that racial discrimination by private individuals is not wholly beyond the reach of the Fourteenth Amendment. While it has held that there must be a nexus between individual action and the state in order to bring the Federal Constitution into play, state involvement need not rise to the level of direct or affirmative action.

A state law requiring individual discriminatory acts is perhaps the most obvious form of state action through individual conduct but the application of the Fourteenth Amendment has not been limited to such flagrant situations. A state cannot exculpate itself merely by showing that a private person made the effective determination to engage in invidious discrimination or some other invasion of fundamental rights. Implication of the state through official authorization or encouragement of unequal treatment of the races, through the availability of its sanctions in support of such inequality, or through failure to act in an area of state responsibility involving discriminatory conduct, all have provided the occasion for invocation of the Fourteenth Amendment.

Buchanan v. Warley, 245 U.S. 60 (1917).

Shelley v. Kraemer, 334 U.S. 1 (1948); Burton v. Wilmington Parking Authority, 365 U.S. 715 (1961).

Anderson v. Martin, 375 U.S. 399 (1964).

Shelley v. Kraemer, supra.

Smith v. Allright, 321 U.S. 649 (1944); Terry v. Adams, 345 U.S. 461 (1953); Evans v. Newton, 382 U.S. 296 (1966).

The new amendment to the California Constitution places the state's legal system squarely behind private acts of housing discrimination. The landlord who would deny Negroes the opportunity to rent or purchase is given the signal to proceed. But discrimination authorized or encouraged by the state has consistently been condemned under the Fourteenth Amendment, even though the decision to discriminate is left to private choice. See, e.g., Shelley v. Kraemer, 334 U.S. 1 (1948); Barrows v. Jackson, 346 U.S. 249 (1953); Anderson v. Martin, 375 U.S. 399 (1964); McCabe v. Atchison T. & S. F. Ry., 235 U.S. 151 (1914); Nixon v. Condon, 286 U.S. 73 (1932); Boman v. Birmingham Transit Company, 280 F.2d 531 (C.A. 5, 1960).

The new amendment implicates state agencies in discriminatory practices in a manner no different in principle than was the case in Shelley v. Kraemer, supra. There the judicial enforcement of private discriminatory practices was determined to be state action within the Fourteenth Amendment. Under the new amendment, the state judiciary is brought into play on the side of discriminatory practices in an equally meaningful way, i.e., through protecting the act of discrimination against legal interference. The point is illustrated by Abstract Investment Co. v. Hutchinson, 204 Cal. App. 2d 242 (1962), where the court concluded that a Negro might defend an action of unlawful detainer by showing that his rental property was being taken from him solely on account of his color. Article I, Section 26, however, would deprive the Negro defendant of his defense on the ground that the landlord may decline to rent on any ground he chooses. Thus, the California courts would be required to strike the defense in a repetition of the Abstract Investment case. Plainly, if the federal Constitution requires judicial protection against eviction on racial

Is this so if federal relief is involved? Is it for exemption, or grant of condemnation

is this a case of decline to rent, but when it is taken away by supreme state court

grounds, as held in Abstract Investment, and the new amendment to the state Constitution prohibits the judiciary from preventing such an eviction, the federal Constitution and Article I, Section 26 are at war.

(Add paragraph on Anderson Cases)

It is simply not true that the new amendment merely places the state in a neutral position -- neither encouraging nor discouraging racial discrimination. The enactment of an affirmative state policy banning state interference with landowners who discriminate against racial minorities cannot be equated with the absence of statutory law relating to discrimination.

Unlike the situation that would exist if present fair housing legislation were merely repealed, the new amendment (1) prevents the development of common law judicial remedies against private acts of racial discrimination, (2) precludes future State and local legislative action against private acts of racial discrimination, no matter how moderate the action or how pressing its need, and (3) enshrines in the California Constitution the grant of an "absolute" right to discriminate on racial and religious grounds. This we submit goes beyond "neutrality" and, in substance, constitutes action of the State directly sanctioning and encouraging private acts of racial discrimination. There is, in fact, a difference in kind between state refusal to prohibit private acts of racial discrimination (no fair housing legislation) and amendment of a state constitution making private acts of racial discrimination a protected "right." In the former instance, private acts of racial discrimination are, to be sure, not prevented by legislation, but in the latter instance, they are actually encouraged by the State.

The new amendment on its face tends to encourage racial discrimination in housing on the part of those who desire to engage in it. As observed in Barrows v. Jackson, 346 U.S. 249, 254 (1953), there is unconstitutional encouragement of the practice of writing racially restrictive covenants when the state places "its sanction behind the [discriminatory] covenants." Enactment of a constitutional provision placing acts of discrimination beyond the reach of the state courts, the State Legislature and every governmental agency in the state encourages discrimination in housing just as surely as placing race labels on the ballot "require[s] or encourage[s]" discrimination in voting. Anderson v. Martin, 375 U.S. 399, 402 (1964). In neither case is discrimination compelled by the state; in both, it is at least facilitated. This cannot be regarded as "neutrality." By virtue of Article I, Section 26, the state has placed its thumb on the scale and tipped it in favor of discrimination.

The encouragement and assistance which the new amendment affords to discrimination becomes even clearer upon consideration of the background events which led to its adoption. The measure was sponsored by the California Real Estate Association and the California Apartment Owners Association, and it was made clear during the efforts to obtain signatures on the initiative petition that the proposal was intended to nullify the Rumford Act and other fair housing laws.[1] The official ballot argument in favor of the measure disclosed the same purpose.[2] It is of course general public knowledge that the campaign respecting the proposed amendment was principally concerned with the issue of racial discrimination. In short, the purpose and expected effect of the measure was to free property owners from legal restrictions against

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[1] See, for example, Editorial in Vol. XLIV Issue No. 2 of California Real Estate Association.

[2] The argument asserted that "Under the Rumford Act, any person refused by a property owner may charge discrimination" and urged voters to enact the proposed amendment in order to free property owners of any such charges.

discriminatory practices in housing. Indeed, racial considerations in the transfer of property constituted the only matters in controversy in respect to the amendment; neither proponents nor opponents were in disagreement as to other considerations that might motivate a landowner to decline an offer to buy or rent, and there was no occasion to propose legislation in this respect.

In light of this single-minded purpose of the new amendment, its constitutionality need not be evaluated in terms of its language alone. State laws or actions which are neutral considered in a vacuum are the equivalent of unconstitutional discriminatory state action where, as in the present case, it can be shown by reference to surrounding circumstances that the purpose and necessary effect is to bring about racial or religious discrimination. For example, in Griffin v. School Board, 377 U.S. 218 (1964), the State of Virginia closed its public schools in one county but continued to operate its public school system in the other counties. This Court found it necessary to consider whether the state had authority to close its schools for lawful reasons since it concluded, on the basis of external circumstances surrounding the closing, that that was not the case. As the Court stated (377 U.S. at 231):

> "(The) public schools were closed and private schools operated in their place with state and county assistance, for one reason, and one reason only: (to discriminate against Negro children)."

In the light of this motivation, the state action took on an unconstitutional aspect.

To the same effect, see Wright v. Rockefeller, 376 U.S. 52 (1964), where the circumstances surrounding a state reapportionment act were inquired into for the purpose of ascertaining whether the districts were composed "with racial considerations in mind." See also, Guinn v. United States, 238 U.S. 347 (1915); Lane v. Wilson, 307 U.S. 268 (1939): Gomillion v. Lightfoot, 364 U.S. 339 (1960).

The external evidence relating to the enactment of the new amendment inescapably points to the conclusion that it was conceived, prepared, submitted for signatures, presented to the voters and enacted with a single purpose in mind--emascualting fair housing legislation and immunizing discriminatory landowners against legal action. In these circumstances, there is little room for the argument that the new amendment does not constitute state encouragement of racial discrimination. Property owners have been told in effect that the state law stands behind their declination to sell or rent to Negroes or members of other members of other minority groups. And this is indeed the case. If the new amendment stands, there is neither a statutory nor a common law ~~namely~~ remedy available against racial discrimination in housing sales and rentals. The Fourteenth Amendment, however, will not permit state involvement of this character in discrimination of so invidious a nature. For that reason alone, the amendment cannot stand.

B. Article I, Section 26, violates the Equal Protection Clause because it authorizes and facilitates racial zoning.

Fifty years ago, this Court held that the Fourteenth Amendment bars state and local legislation dividing residential areas into "white" and "colored" zones. Buchanan v. Warley, 245 U.S. 60 (1917); see also, Harmon v. Tyler, 273 U.S. 668 (1927); Richmond v. Deans, 281 U.S. 704 (1930). Subsequently, in the Shelley case, Supra, it barred attainment of the same result through court enforcement of privately initiated racial covenants. Article I, Section 26 has the effect of authorizing and sanctioning achievement of racial zoning by organized and concerted, or at least parallel, action by those who control the housing market.

The result of permitting discrimination by those who are in the business of selling or renting housing is not merely to sanction occasional refusals here and there of individual housing units. The principal result, and the only one involved here, _/ is to sanction the imposition of "whites only" barriers at the entrances to apartment houses, suburban developments and even entire towns. Particularly with the phenomenal growth in the size of housing developments -- both rental and for sale -- since World War II, _/ the creation of whole new towns by a single company has become commonplace. Article I, Section 26 sanctions de facto racial zoning for these areas.

_/ It should be remembered that these cases do not involve the sale or rental of single homes. As we have seen (supra, pp.), the California statues invalidated by Article I, Section 26 apply only to the kind of housing that is under the control of those to whom housing is a business.

_/ (To be done.)

The Buchanan case dealt with zoning at the block level. Article I, Section 1 would in effect permit racial zoning from the block to the city level.

We submit that such de facto racial zoning cannot be permitted on the theory that it is initiated by private action and that the state does no more than facilitate it by permissive legislation. The structuring of communities is a governmental function -- no different in constitutional significance from the control of voting which this Court protected from discrimination by private parties in Smith v. Allwright, 321 U.S. 649 (1944). There, this Court said (at 664):

> This grant to the people of the opportunity for choice is not to be nullified by a State through casting its electoral process in a form which permits a private organization to practice racial discrimination in the election.

Here, it is the determination of occupancy patterns which the state is permitting by "casting its ...[laws] in a form which permits a private organization to practice racial discrimination ...." Here, as there, constitutional significance should be denied "so slight a change in form ..." (321 U.S. at 661).

Claim of as this against the City cannot write out Buchanan & Yick Wo

Directly applicable here, we submit, is the line of argument that controlled this Court's decision in Marsh v. Alabama, 326 U.S. 501 (1946). There, it was held that the Fourteenth Amendment guarantee of due process (in its application to freedom of expression) protected the distribution of literature on the streets of a privately-owned company town. Thus, the Court first noted that it is such distribution that could not be barred by municipal action and then went on to say (at p. 505):

> ... From these decisions it is clear that had the people of Chickasaw owned all the homes, and all the stores, and all the streets, and all the sidewalks, all those owners together could not have set up a municipal government with sufficient power to pass an ordinance completely barring the distribution of religious literature.

The Court holding that the same results could not be achieved by the action of a single owner. Referring to the fact that the owner was acting as a private entity, the Court said (at p. 506):

> ... Whether a corporation or a municipality owns or possesses the town the public in either case has an identical interest in the functioning of the community in such manner that the channels of communication remain free.

"Ownership does not mean absolute dominion." It concluded that the action of the state in effectuating the restriction by prosecuting those who distributed the literature violated the Fourteenth Amendment.

Here, it is accepted that the state could not limit occupancy in any area to persons of one race. Yet it is claimed that Article I, Section 26 can constitutionally permit owners of property to achieve the same result. We submit that the requirements of the Fourteenth Amendment cannot so easily be evaded.

The concept that the state cannot be viewed as a neutral party in the shaping of communities, and particularly the racial aspect of

communities, is buttressed here by the fact that the state of California has never been neutral in this matter. Whatever may be said about whether a state violates the Equal Protection Clause simply by having a code of law which, by its silence, permits but does not discourage housing discrimination, that is not the case here. As shown in the brief for appellees (pp.); California has, for nearly a century, played an active role through its laws in effecting the racial composition of residential areas. It makes little difference that at times the said policy has been to favor segregation and in others to curb it. The essential fact is that California law has not been "neutral."

C. The Momentum of California's involvement in regulation of discrimination in housing makes its facilitation of discrimination state action within the reach of the Fourteenth Amendment.

What is at stake here is the shaping of residential areas. To a large extent, in our present complex society, that is already done or controlled by state action -- in the form of zoning regulations, building restrictions, control over construction of roads and other forms of transportation as well as the supply of public utilities, and many other factors that determine the nature of a community. Where there is no regulation by the state of sales and rental policies, those who own and control housing have the power to create a pattern of segregation and impose it on a state's entire complex of residential areas. Experience shows that they do just that and that the result is that large segments of the population are denied equal opportunities because of their race, religion or national origin.

On the basis of that experience, California recast its laws so as to break the pattern of segregated housing. We submit that this was, in effect, a fulfillment of its obligation, discussed in Point I, Section D, supra, to use its legislative powers to create and enforce individual rights so as to prevent inequality.

With the growing recognition of the unequal effect of the ghetto system, California and many other states [1] have recognized the obligation -- which we believe is a constitutional obligation -- to recast their laws so as to prevent that inequality. Regulation of the racial character of neighborhoods so as to prevent denial of equality has thus become an accepted aspect of government in California. Whether or not California has an obligation to

[1] (To be done)

undertake such regulation, it has done so. We submit that this Court's decision in Evans v. Newton, 382 U.S. 296 (1966) establishes that any further action by the state in this area must be judged on the basis of whether or not it facilitates discrimination, even by private parties.

In the Evans case, the city of Macon, Georgie, had became involved in the administration of a public park under a private will which limited use of the park to white persons. The city had recognized in recent years that, under the Fourteenth Amendment, it could not exclude Negroes from the park. See Pennsylvania v. Board of Trusts, 353 U.S. 230, (1957). A suit was brought in the Georgia courts by the Board of Managers of the park against the City to compel it to resign as trustee so that the provision of the will requiring exclusion of Negroes could be observed. The City thereupon tendered its resignation which was accepted and private trustees were appointed by the state court. The only reason for the appointment of the private trustees was to enable Negroes to be excluded from the park.

This Court reversed the action of the state court on grounds which are pertinent to the present case. It pointed out that, "The action of a city in serving as trustee of property under a private will serving the segregated cause is an obvious example" of "[C]onduct that is formally 'private'" but which has "become so entwined with governmental policies or so impregnated with a governmental character as to become subject to the constitutional limitations placed upon state action." Evans v. Newton, 382 U.S. at 299. The essence of the opinion was that the state-private involvement which brought about Fourteenth Amendment control had not become "disentangled" (ID. at 302).

The same week that this Court decided Evans v. Newton, the United States Court of Appeals for the Fourth Circuit decided Hawkins v. North Carolina Dental Society, 355 F. 2d 718 (C.A. 5, 1966). The plaintiff in that case, a Negro, sued for admission as a member of the North Carolina Dental Society, basing his claim primarily upon the fact that members of the society, by statute, elected the State Board of Dental Examiners, a governmental body. Following the filing of the case, the state repealed the statute. The court nevertheless

took note of the fact that, in actual practice, the Dental Society still exercised the powers it had had under the statute. Accordingly, the court held that the limitations of the Fourteenth Amendment still applied and that the plaintiff was entitled to admission to this state agency.

These cases, Evans and Hawkins, have in common the characteristic that, once Fourteenth Amendment control attaches, repeal of legislation or of an arrangement that involved the Amendment does not automatically remove the influence of the Fourteenth Amendment from the situation. At the very minimum, the burden is upon those formerly controlled by the Fourteenth Amendment to show that there has been complete "disentanglement."

In this case, the State of California had enacted fair housing legislation. This legislation was not a mere fortuitous sally into the area of housing regulation. It was a recognition by the State that it had a duty under its police power to take action against housing discrimination in order to prevent and eliminate the inequality and other serious social evils resulting from such discrimination. It was designed to implement the Equal Protection Clause of the Fourteenth Amendment.

By the fair housing legislation which Article I, Section 26 purported to annul, a right was conferred not only on Negro American citizens but also on all other members of the community to be protected from these evils. That right was conferred not only to secure the protection of equal laws but also to advance federal policy. See 42 U.S. Code Section 1982:

> All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by

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> All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by

> white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property. R.S. § 1978.

California, having recognized its constitutional obligation and having secured a remedy to protect the rights of Negro and all other citizens in certain property, cannot now divest those rights. Indeed, Evans v. Newton and Hawkins v. North Carolina Dental Society are but particular examples in a racial context of the constitutional rule provisionally established by this Court in Truax v. Corrigan, 257 U.S. 312, 329 (1921)

> It is true that no one has a vested right in any particular rule of the common law, but it is also true that the legislative power of a State can only be exercised in subordination to the fundamental principles of right and justice which the guaranty of due process in the Fourteenth Amendment is intended to preserve, and that a purely arbitrary or capricious exercise of that power whereby a wrongful and highly injurious invasion of property rights, as here, is practically sanctioned and the owner stripped of all real remedy, is wholly at variance with those principles.

Implicit in the Evans and Hawkins rulings is the concept that it is the fact rather than the legal structure of unequal protection that determines application of the Fourteenth Amendment. The State will not be allowed to avoid its constitutional obligation by attaching or removing labels or by fraudulently seeming to wash its hands of a responsibility which it cannot in truth avoid.

Over a period of years, the State of California enacted a series of laws which recognized that its pre-existing legal system resulted in unequal opportunity, because of race, to obtain a "necessary of life." Block v. Hirsh, 256 U.S. 135, 156 (19). In Evans, this Court said, "---- when private individuals or groups are endowed by the State with powers or functions governmental in nature, they become agencies

Does this saying that 14 cannot repeal 14th amend?

or instrumentalities of the State and subject to its constitutional limitations" (382 U.S. at 299). It also quoted its earlier holding in Marsh v. Alabama, 326 U.S. 501, 509 (1946), that a State may not permit private enterprises "to govern a community of citizens so as to restrict their fundamental liberties . . ."

Does Fifth 14 mean it applies only if we find violation of 14th amend including Hawkins v. Bumpers.

By nullifying its laws agains discrimination in housing, California has done what these cases say it may not do. It has restored the system under which every housing unit placed on the market by private enterprise carries a label marking it as available for either one race or another, but not for all. It has given private builders the power not merely to "govern" communities but to create them in a manner that restricts "fundamental liberties."

It is also important that the Court, in Evans, recognized that discrimination in the park in question might not have been unconstitutional if the City had never been involved but that the involvement of the City created a "momentum" that could not simply be turned off by City withdrawal. (382 U.S. at 301). So here, the State, recognizing the fundamental inequality in housing opportunity created under its laws, undertook to exercise its police power to bring about equality. Its present reversal of that decision constituted affirmative action in support of inequality that violated "the mandates of equality and liberty that bind officials everywhere." Nixon v. Condon, 286 U.S. 73, 88 (1932).

CONCLUSION

It is respectfully submitted that the decision of the California Supreme Court should be affirmed.

Respectfully submitted.

Draft: JBR, 2/27/67

Supreme Court of the United States

OCTOBER TERM, 1966

No. 483

NEIL REITMAN, ET AL.,

Petitioners,

vs.

LINCOLN W. MULKEY, ET AL.,

Respondents.

BRIEF OF THE ATTORNEY GENERAL OF THE STATE OF NEW YORK AS AMICUS CURIAE IN SUPPORT OF AFFIRMANCE

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Supreme Court of the United States

OCTOBER TERM, 1966

No. 483

NEIL REITMAN, ET AL.,

Petitioners,

vs.

LINCOLN W. MULKEY, ET AL.,

Respondents.

BRIEF OF THE ATTORNEY GENERAL OF THE STATE OF NEW YORK AS *AMICUS CURIAE* IN SUPPORT OF AFFIRMANCE

Interest of the *Amicus*

The State of New York has been a pioneer in the enactment of fair housing legislation. New York banned discrimination in public housing in 1939,[1] in urban renewal housing in 1950,[2] and in publicly-assisted housing accommodations in 1955.[3] By statutes enacted in 1961 and 1963,

[1] N. Y. Laws, 1939, Ch. 808, § 223, now found in Public Housing Law § 223.

[2] N. Y. Laws, 1950, Ch. 287, now found in Civil Rights Law, Art. 2-A.

[3] N. Y. Laws, 1955, Ch. 341, now found in Civil Rights Law, Art. 2-A; Laws, 1955, Ch. 340, now found in Executive Law § 296, subd. 3.

New York prohibited discrimination in all housing accommodations, private as well as public, with the exception of the rental by the owner of a unit in a two-family house in which the owner or members of his family reside or the rental by an occupant or an owner of a room or rooms in a housing accommodation in which they or members of their family reside.[4]

New York's sister state of California has also taken great strides in recent years in the enactment of legislation to combat discriminatory practices in the sale or rental of housing accommodations.[5] However, California's progress in seeking to provide all citizens with the opportunity to acquire adequate housing was abruptly halted in 1964 by the adoption of Proposition 14 by the California electorate, after a vigorous campaign sponsored by the California Real Estate Association and the California Apartment Owners Association. Proposition 14, which was incorporated into the California Constitution as Article I, § 26, not only has the effect of repealing existing state and local fair housing laws in California, but purports to create a right for any person or corporation to discriminate with "absolute discretion" in the sale or rental of residential property, regardless of the size or scope of the housing accommodation, and "irrespective of how obtained or financed."

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[4] N. Y. Laws, 1961, Ch. 414, as amended by Laws, 1963, Ch. 481, now found in Executive Law § 296, subd. 5.

[5] In 1959, the "Unruh Act" (Cal. Civil Code §§ 51-52) prohibited discrimination by any "business establishment", which was interpreted to encompass all businesses selling or leasing residential housing. See *Burks* v. *Poppy Const. Co.*, 57 Cal. 2d 463, 370 P. 2d 313 (1962). That same year the "Hawkins Act" (formerly Cal. Health & Safety Code §§ 35700-35741) prohibited racial and religious discrimination in publicly-assisted housing accommodations. In 1963, the "Rumford Act" (Cal. Health & Safety Code §§ 35700, et seq.) extended the prohibition against discriminatory practices to private dwellings containing more than four units.

The State of New York views the outcome of this litigation involving the constitutionality of Article I, § 26 of the California Constitution with more than academic interest. We are concerned with the effect that the operation of this section would have on the right of our citizens, who may be members of a minority race or religion, to freely travel to the State of California since we recognize that the constitutional right to travel to other states would be meaningless if our citizens could not obtain adequate housing accommodations at the end of their journey. But of far greater concern is the effect that this litigation may have on the future of fair housing laws throughout the country. It is naive to believe that the recent experience in California, where Proposition 14 was adopted by the electorate despite the active opposition of leaders of both major political parties as well as the leaders of every major religion in the State, could not be repeated in other states. Opponents of anti-discrimination legislation are certain to be encouraged to mount similar campaigns in the wake of their success in California. The rights of members of minorities to secure adequate housing accommodations as well as to obtain equal opportunities for employment and access to public accommodations might well rest on the outcome of this litigation. The time has now arisen in which the public must learn whether the basic needs of citizens in any state may constitutionally be subordinated to the desires of an unconcerned, intolerant majority.

The State of New York, accordingly, files this brief as *amicus curiae* pursuant to Rule 42 of the Revised Rules of this Court.

Questions Presented

1. Does Article I, § 26 of the California Constitution, which purports to create a constitutional right to discriminate in the sale or rental of interests in real property,

irrespective of the scope of the housing accommodation or the manner in which such property was obtained or financed, violate the Fourteenth Amendment of the United States Constitution?

2. Does Article I, § 26 of the California Constitution abridge Federal rights afforded by § 1982 of Title 42 of the United States Code?

Constitutional Provision Involved

Proposition 14, as now incorporated into the California Constitution as Article I, § 26, provides:

> "Neither the State nor any subdivision or agency thereof shall deny, limit or abridge, directly or indirectly, the right of any person, who is willing or desires to sell, lease or rent any part or all of his real property, to decline to sell, lease or rent such property to such person or persons as he, in his absolute discretion, chooses.
>
> 'Person' includes individuals, partnerships, corporations and other legal entities and their agents or representatives but does not include the State or any subdivision thereof with respect to the sale, lease or rental of property owned by it.
>
> 'Real property' consists of any interest in real property of any kind or quality, present or future, irrespective of how obtained or financed, which is used, designed, constructed, zoned or otherwise devoted to or limited for residential purposes whether as a single family dwelling or as a dwelling for two or more persons or families living together or independently of each other.
>
> This Article shall not apply to the obtaining of property by eminent domain pursuant to Article I, Sections 14 and 14½ of this Constitution, nor to the renting or

providing of any accommodations for lodging purpose by a hotel, motel or other similar public place engaged in furnishing lodging to transient guests.

If any part or provision of this Article, or the application thereof to any person or circumstance, is held invalid, the remainder of the Article, including the application of such part or provision to other persons or circumstances, shall not be affected thereby and shall continue in force and effect. To this end the provisions of this Article are severable."

POINT I

Article I, § 26 of the California Constitution violates the Equal Protection Clause of the Fourteenth Amendment.

In considering the constitutionality of Article I, § 26 of the California Constitution, it should be recognized at the outset that this section does more than render inoperative existing fair housing laws and ordinances within the state. If the amendment at issue had as its sole purpose the repeal of certain legislation, it would have been simple enough to limit its language to achieve that result. Instead, it is clear from a reading of § 26 that the object of the Amendment was, as described by the Supreme Court of California in its decision below, to create "a purported constitutional right to privately discriminate on grounds which admittedly would be unavailable under the Fourteenth Amendment *should state action be involved*" (R. 20).

This attempt to evade the prohibitions of the Fourteenth Amendment must be deemed to have failed in at least two vital respects. First, the effect of Section 26, the attendant circumstances surrounding its enactment, and the history of state involvement in housing discrimination, reveal that its adoption cannot be considered as an act of neu-

trality by the state as petitioners suggest, but rather constitutes a state attempt to sanction and perpetuate racial discrimination. Second, the application of the right created by § 26 would apply to housing developments and involve situations in which state action necessarily would be involved in violation of the prohibitions of the Fourteenth Amendment.

A. Article I, § 26 is not a declaration of state neutrality, but rather constitutes a state effort to sanction and perpetuate racial discrimination in the sale and rental of housing accommodations.

As is often the case in examining the effect of state legislation in the light of a constitutional challenge under the Fourteenth Amendment, it is necessary to consider first the historical background and attendant circumstances concerning the act in issue. *Griffin* v. *County School Board,* 377 U. S. 218, 231 (1964); *Gomillion* v. *Lightfoot,* 364 U. S. 339 (1960). Here, the right of private discrimination set forth in § 26 must be construed in light of the existing patterns of housing segregation in California and the difficulties that have been encountered by members of minorities in seeking adequate housing accommodations. Such an examination will reveal that only in a historical vacuum can Article 1, § 26 be considered as an act of neutrality by the State of California.

1. The existence of discrimination in the sale and rental of housing accommodations in California.

In 1960, there were approximately 1.3 million non-whites residing in California, of which 883,000 were Negroes[6] who were concentrated principally in the major urban centers of the state.[7]

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[6] U. S. Bureau of Census, *General Population Characteristics,* California (PC (1)-6b), 1961.

[7] U. S. Commission on Civil Rights, 50 States Report, p. 43 (1961).

Approximately 80% of the Negroes living in California's metropolitan areas were found to reside in segregated neighborhoods.[8] Recent studies show that the patterns of segregation are increasing. For example, a 1966 survey by the Bureau of the Census reported that the percentage of Negroes in south Los Angeles has increased from 70% in 1960 to 81% in 1965—*Current Population Reports, Technical Studies,* P-23-17.

The substantial segregation of non-whites in California has been the product of discrimination in the sale and rental of housing. A *Report on Housing in California* issued by the Governor's Advisory Commission on Housing Problems in 1963 revealed that it was practically impossible for non-whites to buy new homes in southern California subdivisions, while in northern California fewer than 100 non-whites had been able to buy homes in unsegregated tracts in a period during which 350,000 new homes were built. The same report noted that "even in San Francisco a survey of recently constructed apartments showed that there were no Negroes in structures containing 97% of the new units and no Orientals in 78%" (Governor's Advisory Commission, *op. cit.,* p. 9).

Petitioners have claimed that the fact that non-whites are substantially less well-housed then whites is not due to discrimination and segregation, but due to the complex factors that make non-whites poorer than whites. Brief for Petitioners, pages 42-43. While there is an element of truth in that statement, it ignores the fact that even where non-whites have the income to purchase homes, they are

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[8] Karl & Alma Taeuber, *Negroes in Cities,* Aldiner (1965), p. 40. A segregation index based upon the the percent of Negroes who would have to move if they were to live at random in metropolitan areas was devised by the authors showing the following figures for major California cities: Los Angeles 81.8%, San Francisco 69.3%, San Diego 81.3%, Long Beach 84.0%, Riverside 83.5%, San Bernadino 84.0%, Bakersfield 87.5%, Fresno 83.9%, Oakland 73.1%

often deprived of the opportunity of doing so due to the erection of discriminatory barriers. Thus, in both Los Angeles and San Francisco, it was found that non-whites earning between $7,000 and $10,000 would probably buy more than twice as many homes priced at $15,000 or higher than they already own as a group if such housing were available to them. Housing and Home Finance Agency, *Potential Housing Demands of Non-White Population in Selected Metropolitan Areas, Table G* (1962). Moreover, since the supply of housing available to non-whites is limited as a result of discriminatory attitudes, the prices they must pay for housing accommodations are generally grossly inflated when compared to equivalent accommodations available to white citizens.

The inevitable result of discrimination in the sale or rental of housing accommodations is the creation of urban ghettos, with all its attendant disabilities. Many of these disabilities have been outlined in the President's 1967 Civil Rights Message to Congress, in the following terms:

> "The result of countless individual acts of discrimination is the spawning of urban ghettos, where housing is inferior, overcrowded and too often overpriced.
>
> Statistics tell a part of the story. Throughout the nation, almost twice as many non-whites as whites occupy deteriorating or dilapidated housing. In Watts, 32.5 per cent of all housing is overcrowded, compared with 11.5 per cent for the nation as a whole.
>
> The environment of most urban ghettos is the same: Inferior public facilities and services—streets, lighting, parks; sanitation and police protection; inferior schools; and isolation from job opportunities. In every sphere of urban life the ghetto-dweller is short-changed."[9]

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[9] *New York Times,* February 16, 1967, p. 28.

Indeed, the California Legislature has itself recognized that "racial discrimination against persons of certain groups in seeking housing" is one of the principal causes of slum and blighted residential areas. See Cal. Community Redevelopment Law § 33039(c).

2. *Segregated housing conditions in California are in part the result of prior state action.*

The existence of racial segregation and housing in California must, in large part, be attributed to the effect of restrictive covenants and to the actions of real estate boards—which have in the past involved support by state and local governments.

The use of racial restrictive covenants limiting the sale or rental of interests in real property to non-caucasians has been prevalent in Los Angeles County since as early as 1902.[10] In 1920, the Supreme Court of California, in an action seeking enforcement of a restrictive covenant against a Negro purchaser, found that restrictions against use and occupancy by non-whites were valid and enforceable. *Los Angeles Investment Company* v. *Gary*, 181 Cal. 680 (1920). During the next three decades (until such covenants were held to be unenforceable by *Shelley* v. *Kraemer*, 334 U. S. 1 [1948]), with the assistance of the California courts, the use of restrictive covenants played a significant role in confining non-caucasians to certain urban areas.[11] By 1947, it was reported that Los Angeles was widely covered by these racial restrictive covenants and that new housing subdivisions were blanketed by them. President's Committee on Civil Rights, *To Secure These Rights*, 68 (1947).

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[10] Hearings before the United States Commission on Civil Rights, Los Angeles, San Francisco, January, 1960, pp. 256-257. (Hereafter referred to as Cal. Hearings.)

[11] Cal. Hearings, p. 257.

Although the State of California licenses all real estate brokers, it has been generally conceded that California real estate agents have been a powerful force in creating and perpetuating patterns of segregation within the State.[12] The California State Advisory Committee of the United States Commission on Civil Rights concluded in 1961 that a large measure of blame for the existence of discrimination in California must be placed on the real estate industry. The Committee stated that:

> "* * * So far as Committee testimony has been given, it would appear that a considerable number of leaders in the real estate industry still continue to support and advance the concepts of segregation in their business. Their actions, in large part, appear to foster continued discrimination in California. In such population centers as Los Angeles and San Diego, the realty boards have no Negro members whatsoever. This is particularly disturbing when it is known that such boards represent the top professional association of real estate brokers and that under State law, their members alone are entitled to use the coveted term 'realtor' in business advertising." U. S. Commission on Civil Rights, *50 States Report*, p. 44 (1961).

In the Palo Alto area, the United States Civil Rights Commission learned that only three of the 600 real estate brokers and salesmen showed property on a non-discriminatory basis.[13]

In addition to the actions of state licensed real estate brokers and the state responsibility in enforcing restrictive covenants prior to the *Shelley* decision, the state, as well as the federal government, had contributed to the existence of segregated patterns by pouring public funds

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[12] See Cal. Hearings, pp. 257, 483 *et. seq.*

[13] U. S. Commission on Civil Rights Report No. 4, Housing, p. 123 (1961).

into housing projects which openly discriminated against non-white citizens. The San Francisco Housing Authority had adopted a policy in 1942, which, until it was enjoined from continuing its discriminatory practices pursuant to court order obtained in *Banks* v. *Housing Authority,* 120 Cal. App. 2d 1, 260 P. 2d 668, cert. denied 347 U. S. 974 (1954), provided that:

> "In the selection of tenants for the projects of this Authority, this Authority shall act with reference to the established usages, customs and traditions of the community * * * and *shall not insofar as possible enforce the commingling of races* * * *" (Emphasis added) 260 P. 2d at 671.

With respect to assistance furnished by the Federal Housing Authority, an FHA official stated that of the 125,000 FHA assisted housing units built from 1950 to 1954 in the Los Angeles area, only 3,000 units were available for purchase by non-whites.[14]

In addition to the actions already described, the State of California has in the past specifically barred certain minorities from acquiring particular interests in real property. Thus, in 1879, California adopted a constitutional provision authorizing the delegation of power to localities to zone Chinese into particular areas, or to remove them completely from the limits of cities and towns. California Constitution, Article XIX (1879). This constitutional provision was not repealed until 1952. The California Legislature also enacted an Alien Land Law in 1920 (Cal. 1 General Laws, Acts 260-261) which prevented aliens who were ineligible for citizenship from acquiring interests in real property. It was repealed in 1950.

It should be pointed out that the above is not intended to single California out by way of condemnation for the existence of segregated housing patterns. This same criti-

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[14] Cal. Hearings, p. 258.

cism could probably be leveled at most states in this union. Nor has California shirked its responsibility in seeking to correct this situation as shown by the passage of their Legislature in recent years of the Unruh, Hawkins and Rumford Acts, *supra*. But the responsibility to eliminate the evils of housing discrimination is a continuing one and cannot be ignored as the proponents of Proposition 14 have contended by repealing fair housing ordinances and restoring the State to a position of neutrality—for which there is no historical basis.

3. *The myth of state "neutrality".*

In view of the above factors which have created segregated housing patterns throughout California, it is absurd to contend that the repeal of existing fair housing laws and ordinances in California and the creation of a right to discriminate with impunity in the sale or rental of residential housing will involve an act of neutrality by the state. If non-white citizens in California were unable, as has been shown, to obtain housing accommodations except in urban ghettos prior to the recent enactment of state anti-discrimination statutes, the repeal of these laws and the creation of an absolute right to discriminate means the restoration of the same barriers these citizens have previously faced in seeking decent shelter.

The effect of Article I, § 26, will be to prevent the California Legislature from taking any future action to break down segregated housing patterns and to relieve the attendant evils that arise in urban ghettos. It would not only bar the Legislature from seeking to ameliorate the problems faced by members of minorities in acquiring decent housing, but would prevent the California courts from any extension of common-law policies in this area. In this regard, it should be noted that the Superior Court in Sacramento County, in the case of *Ming* v. *Horgan* (No. 97130), June 23, 1958, 3 Race Rel. L. Rep. 693), held that a Negro could not be excluded from purchasing a new

tract home in a subdivision in the Sacramento area which had obtained FHA and VA insurance solely because of his race—despite the absence of any statutory provision at that time barring racial discrimination in the sale of housing. The Court stated at page 12 of its memorandum opinion:

> "* * * can the courts close their eyes to the inevitable result that if they should uphold defendants in their asserted right of freedom of contract, they would for practical purposes be reverting to a 'separate but equal' rule for those for whom the builders and realtors choose to apply it? * * * If the courts were to * * * accord to builders and realtors the unfettered freedom of contract here contended for, the constitutional guarantees of equal protection and non-discrimination would be accorded only secondary importance and they would have to recede from a good deal that has been laid down in recent years as fundamental doctrine * * *"

If the right to discriminate which Article I, § 26 purports to provide is held constitutional under Fourteenth Amendment requirements, the issuance of such decisions, as in the *Ming* case, *supra*, would be proscribed in the future.

In sum, the operation of Article I, § 26 can only serve to perpetuate the present patterns of segregated housing and encourage the development of similar patterns in the future. Even if the State or its subdivisions had not been indirectly responsible for housing segregation in the past, it may not by constitutional amendment seek to perpetuate the existence of segregated housing areas. *Cf. Burton* v. *Wilmington Parking Authority*, 365 U. S. 715, 725 (1961); *Taylor* v. *Board of Education of City School District of New Rochelle*, 294 F. 2d 36 (2nd Cir., 1961), cert. denied 368 U. S. 940. Nor may the State encourage, or furnish the vehicle, by which racial prejudice may operate against

any group, whether by express statutory prohibition or by indirection. *Anderson* v. *Martin,* 375 U. S. 399, 402-404 (1964); *Terry* v. *Adams,* 345 U. S. 461 (1953).

Nearly a century ago, this Court, in speaking of the purposes of the Fourteenth Amendment, stated in *Strauder* v. *West Virginia,* 100 U. S. 303, 307-308 (1879):

> "* * * The words of the [fourteenth] amendment, it is true, are prohibitory, but they contain a necessary implication of a positive immunity, or right, most valuable to the colored race,—*the right to exemption from unfriendly legislation* against them distinctively as colored,—exemption from legal discriminations, implying inferiority in civil society, lessening the security of their enjoyment of the rights which others enjoy, and discriminations which are steps towards reducing them to the condition of a subject race." (Emphasis supplied)

Article I, § 26 is, in purpose and effect, an example of the type of "unfriendly legislation" that the Fourteenth Amendment was intended to proscribe.

B. The scope of the right to discriminate conferred by Article I, § 26 would involve state action.

There can be no question that discriminatory State action abridging the right of any person to acquire, enjoy, own and dispose of property is in violation of the Fourteenth Amendment. *Shelley* v. *Kraemer,* 334 U. S. 1, 10 (1948); *Oyama* v. *California,* 332 U. S. 633 (1948); *Buchanan* v. *Warley,* 245 U. S. 60 (1917). Since it is impossible to fashion and apply a precise formula for recognition of State responsibility under the Equal Protection Clause, this Court has stated:

> "Only by sifting facts and weighing circumstances can the non obvious involvement of the State in pri-

vate conduct be attributed its true significance." *Burton* v. *Wilmington Parking Authority,* 365 U. S. 715, 722 (1961).

The full scope of the right to discriminate conferred by the California amendment at issue cannot help but involve State action in a significant manner.

Although the language in the "Argument in favor of Proposition 14" on the official ballot (Petitioners' Brief, App. 3-5) is subtly phrased to imply that it is only the individual homeowner whom the amendment is designed to protect, it is clear from a reading of the proposition itself that it is the large apartment house corporations and realty developers and real estate agents, who will share in the right to discriminate. Thus, the term "person," who in the amendment is given the right to decline to sell, lease or rent any interest in real property with "absolute discretion," is defined to include "individuals, partnerships, corporations, and other legal entities and their agents or representatives," excluding only the State or any subdivision thereof with respect to property owned by it. The term "real property" is defined to include "any interest in real property of any kind or quality, present or future, irrespective of how obtained or financed, which is used, designed, constructed, zoned or otherwise devoted to or limited for residential purposes * * *." Only property acquired by eminent domain, and public places engaged in furnishing lodging, are excluded from the section's application.

The scope of Article I, § 26 is, therefore, broad enough to confer a right of racial discrimination on any privately owned residential development, regardless of its size or the amount of state and federal financial support it has received. In *Peyton* v. *Barrington Plaza Corporation,* 50 Cal. Rptr. 905, 413 P. 2d 849 (Sup. Ct., Cal., 1966), this very right to engage in racial discrimination upon the

authority of Article I, § 26 was asserted by Barrington Plaza, in the City of Los Angeles. Barrington Plaza, the largest apartment development in the western United States, provides apartment living for 2,500 people and includes many retail shops and professional services. The development was part of the urban development program undertaken by the City of Los Angeles, with 90% of its construction costs financed by a $17,000,000 low interest rate loan under the National Housing Act. Defendants' assertion of Article I, § 26 as a defense to a claim for damages by a Negro physician who was refused an apartment in Barrington Plaza was sustained by the Superior Court, but the judgment was reversed by the California Supreme Court on the authority of *Mulkey* v. *Reitman,* 50 Cal. Rptr. 881, 413 P. 2d 825 (1966).

Even in the absence of the *Mulkey* decision, *supra,* there can be no doubt that the creation of a right by Article I, § 26 to engage in racial discrimination, when practiced by a private development such as Barrington Plaza, must be held to contravene the prohibitions of the Fourteenth Amendment. See, e.g., *Burton* v. *Wilmington Parking Authority, supra; Evans* v. *Newton,* 382 U. S. 296 (1966); *Smith* v. *Holiday Inns of America,* 336 F. 2d 630 (6th Cir., 1964); *City of Greensboro* v. *Simpkins,* 246 F. 2d 425 (4th Cir., 1957). As the facts set forth in the opinion of the California Supreme Court point out, Barrington Plaza not only received substantial government financial assistance, but was aided by the State and local governments in receiving zoning changes to accommodate the development. It also received building permits, sold securities, and established shops and professional services all pursuant to State or local approval, cooperation and authority. In line with the reasoning of the above authorities, all these facets of State involvement should prohibit racially discriminatory conduct.

The type of housing development described in the *Barrington Plaza* case, *supra,* is by no means unique in Cali-

fornia today. Many of these housing projects, in terms of their dimensions and functions alone, should be obliged to conform to the same constitutional restrictions as were imposed on the company town in *Marsh* v. *Alabama,* 326 U. S. 501 (1946).

In practice, there are few residential housing projects that cannot be said to depend upon State support in significant involvements. The issuance of corporate charters, the licensing of real estate brokers, the granting of zoning awards, the recording of deeds, and the construction of roads and sidewalks all involve aspects of State action.

Moreover, State action would be involved in any attempt by the California courts to enforce or recognize the right to discriminate accorded by Article I, § 26. Thus, in *Hill* v. *Miller,* 50 Cal. Rptr. 908, 413 P. 2d 852 (1966), an action to restrain a landlord from evicting a Negro tenant, solely because of his race, was dismissed by the Trial Court by virtue of Article I, § 26, prior to being reversed by the California Supreme Court upon the authority of *Mulkey* v. *Reitman, supra.* See also *Prendergast* v. *Snyder,* 50 Cal. Rptr. 903, 413 P. 2d 847 (1966). Here, again, even in the absence of the *Mulkey* decision, the enforcement or sanctioning by the State judiciary of conduct based on racial discrimination would be violative of the Fourteenth Amendment. See *Shelley* v. *Kraemer, supra; Barrows* v. *Jackson,* 346 U. S. 249 (1953).

To attempt to carve out an exception to the "State action" concept by declaring that the right conferred by § 26 shall apply to any interest "irrespective of how obtained or financed" is a meaningless gesture. Clearly, a State constitution may not bind this Court in defining the area in which discriminatory conduct may flourish with impunity. While there may be residential properties in which the extent of State involvement is minimal, the application of § 26 is in no manner confined to that area.

The highest court in California, with the primary responsibility of preserving, where possible, the constitutional

portions of State enactments, found it impossible to differentiate between those portions or applications of the Amendment which might preserve a "proper basis for discrimination" consistent with Fourteenth Amendment requirements (R. 29-31). The language and object of the Amendment leaves no opportunity for severability unless the definition of the right to discriminate sought to be accorded is rewritten by this Court. The entire Amendment must, accordingly, be held invalid as a violation of the Fourteenth Amendment.

POINT II

Article I, § 26 of the California Constitution abridges the privileges of citizens of the United States to reside and acquire interests in real property within the State of California.

Section 1 of the Fourteenth Amendment provides:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States * * *"

The exact nature of the privileges and immunities which are derived from *national* citizenship has been a subject of dispute since the issuance of the opinion of Mr. Justice Miller in the *Slaughter-House cases,* 16 Wall. 36 (1873).[15] However, it is well established that the right to move freely from state to state is an incident of national citizenship

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[15] Prior to the adoption of the Fourteenth Amendment, the privileges and immunities of citizens in the several States were said to include "the enjoyment of life and liberty with the right to acquire and possess property of every kind." *Corfield* v. *Coryell,* 4 Wash. C. C. 371 (1825).

protected by the privileges and immunities clause of the Fourteenth Amendment against state interference. *Crandall* v. *Nevada,* 6 Wall. 35 (1868); *Twining* v. *New Jersey,* 211 U. S. 78, 97 (1908); *Truax* v. *Raich,* 239 U. S. 33, 39 (1915); *United States* v. *Guest,* 383 U. S. 745, 757-759 (1966).

In *Edwards* v. *California,* 314 U. S. 160 (1941), where this Court invalidated a California statute designed to keep indigents from migrating to California, the right of American citizens to enter into and abide in any state served as the basis for the concurring opinion of Mr. Justice Douglas, joined by Justices Black and Murphy. Justice Douglas observed that to permit states to bar indigents from residing within their borders would allow:

> "* * * such an exception to be engrafted on the rights of *national* citizenship * * * [as] to contravene every conception of national unity * * * It would prevent a citizen because he was poor from seeking new horizons in other States. It might thus withhold from large segments of our people that mobility which is basic to any guarantee of freedom of opportunity." (p. 181)

A state is not only prohibited from directly interfering with the national right to enter its borders, as in *Edwards* v. *California, supra,* but may not seek to circumvent this right by imposing barriers preventing non-residents from obtaining employment. Thus, in *Truax* v. *Raich,* 239 U. S. 33 (1915), this Court sustained the contentions of a non-resident alien that an Arizona law, which required all Arizona employers of more than five workers to hire not less than 80% qualified or native born citizens of the United States, was invalid. The Court declared that Raich, having been lawfully admitted into the country under Federal law, had a Federal privilege to enter and abide in "any state in the union," and that this privilege to enter and abide in any state carried with it the "right to

work for a living in the common occupations of the community." The Court went on to state that:

> "The assertion of an authority to deny to aliens the opportunity of earning a livelihood when lawfully admitted to the State would be tantamount to the assertion of the right to deny them entrance and abode, for in ordinary cases they cannot live where they cannot work. And, if such a policy were permissible, the practical result would be that those lawfully admitted to the country * * * instead of enjoying in a substantial sense and in their full scope the privileges conferred by admission, would be segregated in such of the States as chose to offer hospitality." (p. 42)

Similarly, in *Takahashi* v. *Fish & Game Commission,* 334 U. S. 410 (1948), this Court followed the principles stated in *Truax* v. *Raich, supra,* to invalidate a California law barring the issuance of commercial fish licenses to any person ineligible for citizenship. See also *Colorado Anti-Discrimination Commission* v. *Continental Air Lines,* 372 U. S. 714, 721 (1963).

If a state may not interfere with the national privilege of citizens (as well as aliens) to enter and abide in any state in the union by limiting their right to secure employment, it should necessarily follow that a state may not constitutionally limit their right to secure housing within its borders by laws which sanction, if not encourage, racial and religious discrimination in the sale and rental of housing accommodations.

The enactment of the *Unruh, Hawkins* and *Rumford* Acts by the California Legislature were based upon the recognition of the immense difficulties that have been encountered by members of minority races in obtaining adequate housing in California. The repeal of fair housing legislation and the creation by Article I, § 26 of a "right" to engage in racial or religious discrimination in housing transactions, will necessarily discourage non-whites from

moving to California, will limit the housing opportunities available to non-whites now residing in California, and will tend to confine them to other states and within segregated locales in California itself.

In his concurring opinion in *Bell* v. *Maryland,* 378 U. S. 226, 242 (1964), Mr. Justice Douglas, in declaring that segregation in private restaurants was a "denial of a privilege and immunity of national citizenship", stated (p. 255):

> "Is the right of a person to eat less basic than his right to travel, which we protected in *Edwards* v. *California,* 314 U. S. 160? Does not a right to travel in modern times sink in value materially when there is no accompanying right to eat in public places?"

To the above, we might add: Is not the right to enter into and abide in any state rendered meaningless without a right to obtain housing free from racial discriminatory practices that have been sanctioned by state law?

POINT III

Article I, § 26 is violative of federal rights set forth in § 1982 of Title 42 of the United States Code.

42 U.S.C. § 1982 provides:

> "All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property."

The above provision first appeared in § 1 of the Civil Rights Act of 1866 (Ch. 31, § 1, 14 Stat. 27) enacted several months after the adoption of the Thirteenth Amendment. On May 31, 1870, after the ratification of the Fourteenth Amendment, the above section was reenacted as part of § 18 of the Second Civil Rights Act (Ch. 114, 16

Stat. 140) and was recast in its present form in the general statutory provision of 1875 as § 1978 of the Revised Statutes.

Section 1982 was relied on by this Court in *Oyama* v. *California,* 332 U. S. 633 (1948), in holding that the California Alien Land Law, as applied to bar the citizen son of a Japanese alien from inheriting an interest in agricultural land, deprived the son of the equal protection of the laws and of his privileges as an American citizen. Referring to § 1982, the Court noted that (p. 640):

> "By federal statute, enacted before the Fourteenth Amendment but vindicated by it, the states must accord to all citizens the right to take and hold real property."

The Court concluded (p. 647):

> "* * * this case presents a conflict between the State's right to formulate a policy of landholding within its bounds and the right of an American citizen to own land anywhere in the United States. When these two rights clash, the rights of a citizen may not be subordinated merely because of his father's country of origin."

A state law may be violative of the rights afforded by § 1982, despite the absence of any express language referring to any race or creed, if the practical consequences of such law limits the opportunities of any class of citizens to acquire property interests. This was true of the statute in question in *Oyama, supra,* as was recognized by Mr. Justice Murphy in his concurring opinion in which he observed:

> "In its argument before us California has disclaimed any implication that the Alien Land Law is racist in its origin, purpose or effect. Reference is made to the

> fact that nowhere in the statute is there a single mention of race, color, creed * * * However, an examination of the circumstances surrounding the original enactment * * * and its subsequent application reveals quite a different story." 322 U. S. at 650-651.

Similary, although Article I, § 26 of the California Constitution does not specifically refer to any race or creed, its practical consequences will be to subject the non-white citizens of California to the prejudices of the white majority in acquiring or retaining interests in real property without recourse to any state agency or the courts.

It is obvious that the rights provided by § 1982 may not be abridged by any state statute. However, it must also be remembered that § 1982 was originally enacted pursuant to the authority of Congress to enforce the Thirteenth Amendment. The objectives of Congress in enacting that section were described by this Court in the *Civil Rights Cases,* 109 U. S. 3, 22 (1883), in the following terms:

> "Congress, * * * by the Civil Rights Bill of 1866, passed in view of the Thirteenth Amendment, before the Fourteenth was adopted, undertook to wipe out these burdens and disabilities, the necessary incidents of slavery, constituting its substance and visible form; and to secure to all citizens of every race and color, and without regard to previous servitude, those fundamental rights which are the essence of civil freedom, namely, the same right to make and enforce contracts, to sue, be parties, give evidence, and to inherit, purchase, lease, sell and convey property, as is enjoyed by white citizens."

Since § 1982 rests upon the authority of the Thirteenth (as well as the Fourteenth) Amendment, its coverage extends to any discriminatory acts which abridge the rights set forth therein regardless of any showing of state ac-

tion. As observed by the court in the *Civil Rights Cases, supra,* at p. 23:

> "Under the Thirteenth Amendment, the legislation, so far as necessary or proper to eradicate all forms and incidents of slavery and involuntary servitude, may be direct and primary, operating upon the acts of individuals, whether sanctioned by state legislation or not * * *"

See also *Clyatt* v. *United States,* 197 U. S. 207 (1905); *United States* v. *Shackney,* 333 F. 2d 475, 486 (2d Cir., 1964).

It should be evident from the above that any agreement or action taken by private sellers or lessors of real property to prevent Negroes from acquiring or leasing property would be violative of the rights set forth in § 1982. Insofar as Article I, § 26 of the California Constitution attempts to cloak individuals and corporations with immunity in discriminating against non-white citizens in the sale or rental of real property, it is an abridgement of the rights provided by § 1982 and, under the Federal Supremacy Clause, cannot be sustained. *Cf. Katzenbach* v. *Morgan,* 384 U. S. 641 (1966).

CONCLUSION

For the foregoing reasons, the decision of the Court below that Article I, § 26 of the California Constitution is in violation of the Fourteenth Amendment of the United States Constitution should be affirmed.

Dated: New York, N. Y., March 3, 1967.

Respectfully submitted,

LOUIS J. LEFKOWITZ
Attorney General of the State of New York

SAMUEL A. HIRSHOWITZ
First Assistant Attorney General

GEORGE D. ZUCKERMAN
LAWRENCE J. GROSS
Assistant Attorneys General
Of Counsel

February 28, 1967

Joseph Robison, Esq.
American Jewish Congress
15 East 84th Street
New York, New York 10028

Re: Reitman v. Mulkey

Dear Joe:

I have taken seriously your direction to respond very promptly, and for whatever it is worth here are some thoughts. Obviously, it goes without saying, and it should not be necessary to make any comments, as to how much I appreciate the tremendous effort because of the high quality of your brief. As you know our organization of course is happy to be associated with you and it. My comments therefore, in no way should be thought to affect the nature of the argument, but there are questions to be raised, as I trust I will make clear, which might sharpen some of the arguments that have been ably made.

While this is of course an amicus brief in my view it is one of the few instances where an amicus brief might be of interest to the court. While it is true we are writing an amicus brief, nevertheless in view of the importance of the matter I think I would write it more as if it were a brief for the parties. I suggest two things, one, that we state very specifically, not merely in terms of the issue involved but in terms of the precise question the court is called upon to determine not only whether proposition fourteen is constitutional under the fourteenth amendment, or to what extent it may or may not be constitutional, but also whether the plaintiffs have stated a cause of action or whether that cause of action was outlawed by proposition fourteen.

Two in line with this I would set forth far earlier in the brief, probably in the introductory statement, or in a footnote the substance of of the present law of California which proposition fourteen appears to negate.

With regard to the main body of the brief, it is axiomatic that no state constitutional provision, whether adopted by referendum or any other means, can write out a part of the United States Constitution;thus proposition fourteen has to be looked at from this point of view. Clearly the court is only going to declare it unconstitutional, if it does so at all in those terms, and in terms of the cases that have interpreted the United States Constitution. No where do I see the statement as to what it will do in this particular case should proposition fourteen be upheld. In a sense isn't this really the strongest argument ag against proposition fourteen and not deneral statements of law which may or may not bear directly on the question before the court? The family is being deprived of an apartment which could not have been denied them under the law prior to proposition fourteen.

With this in mind it seems that a sharper reading of proposition fourteen in in line. Whatever the motivations were of the writers of the proposal, proposition fourteen comes out in terms of the right of a person in California <u>to decline to sell, lease or rent as he in his absolute discretion chooses</u>. The proposition is not phrased in terms of the right of a person to sell or dispose of property to any one he chooses but merely in terms of decline to sell.

This means a number of things to me and I say these because there is a tendency in the brief which I think should be written down, to overstate the evil of proposition fourteen to the point where the court may reject reading it because of that. Thus, the following situations ought to be clarified;a) certainly proposition fourteen can not write out <u>Shelley</u> v <u>Kraemer</u> nor can it of course write out Buchanan v. Warley; b) while under proposition fourteen one may decline to rent to any one he chooses, this is not the same as saying that he may dispossess someone already in the premises for any reason he chooses, particularly one which violates the fourteenth amendment nor do I think a brief should be written in terms of the assumption that it can, this may hang us later on;c) proposition fourteen can't write out any federal regulations that may presently be in existence with

regard to the use of federal money, or state money for that matter, so that if large developments are built with the aid of federal money, I think proposition fourteen cannot avail against them; d) or for that matter, if condemnation rights of the state are given to a developer, I don't see how proposition fourteen can prevail against that right; e) nor can I see proposition fourteen authorizing brokers to rent or sell property in a discriminatory manner, when they function only with a state license.

I am sure there are many examples of this kind all important. The proposition fourteen did not purport to eradicate either the Hawkins law, the Unruh law or the Rumford law, although it may do so by indirectom. These laws are still on the books of California;proposition fourteen has to be read in terms of what it can do constitutionally;it leaves Hawkins, Unruh and Rumford in effect to some extent since it has not specifically eliminated ther proposition fourteen did not eliminate those laws.

Proposition fourteen has to be considered in light of the fourteenth amendment and in light of these laws that exist in California the Supreme Court knows this and our ignoring it will not endear our brief to them. Specifically, since ther are serious questions of derogation of individual rights, proposition fourteen can not be written to eliminate individual rights;if pooposition fourteen does not specifically eliminate them. Thus the Unruh law that affects the rights of brokers or banks or other persons, outside the immediate scope of the right to decline to sell, etc. would not appear to be affected by proposition fourteen. As I read proposition fourteen nothing in proposition fourteen authorizes a bank to grant discriminatory mortgages or money to be used for some other discriminatory purposes relating to housing which might presently be illegal under the laws of California and similiarly this is true of brokers or other persons who may be affected by the prior laws.

Nor should proposition fourteen be used to argue that now covenants running with the land restricted against any group of people are legal.

In essence isn't there an argument to be made that proposition fourteen does not affect many situations which the brief seems to indicate that it might. I would hate to concede that these

points are affected by proposition fourteen because at some point in the future we may want to say the opposite. In other words isn't it important that we narrow the issue first in this case showing the invalidity of proposition fourteen to the sp ecific facts, before we go into the general statements of principal of what harm it will do. It does harm in this specific instance.

In many respects I think the last arguments I think the last arguments made in the brief that centers around Evans v. Newton is the strongest argument and I would like to see it put at the very beginning. This is a specific argument and not generalized and it relates to the very question we are concerned about, not racial discrimination in general. Can a state which has created a right of equality take away that right on the theory that it merely is becoming neutral in taking away that right. If anything it is stronger than Evans since the legislature developed that right. A definition of equality was formulated which is now diminished.

Once a standard of equality exists isn't any derogation of that standard an inequality, or is it merely a neutrality. Although I do not think can go quite so far, as said on page 34, that there is a duty under the police power to take action against housing discrimination;should'nt the term be "right" instead of "duty" once that right has been asserted, to eliminate it constitutes a violation of the fourteenth amendment. This point in a way illustrates the difference between procedural and substantive due process and procedural and substantive equality. The state says in essence there is no lack of procedural due process or equality because the state is not denying anybody anything. Our answer is that the state has created a right, an act of equality and while procedurally it may not itself be doing anything to deny equality, that is allowing proposition fourteen to be voted upon, to be passed, to be certified even though the state in no way encouraged any of these acts The result of these acts will the perpetuation of the ghetto.

Thus I think the over broad statements about proposition fourteen will cause a lack of interest in the brief. I think slightly recasting Evans v. Newton argument up front, and a statement to the effect that we do not concede that proposition fourteen does some of the things that I have said above, but since there have been no court interpretations of them, the Supreme Court should consider proposition fourteen in those terms also because this was the intent of the intent of the passers of the proposition even though they set it up ineptly. Why they did not phrase proposition fourteen in terms of the right of a person to sell to any one he chooses, through any agency he chooses.

I don't know, but I think the court will in its effort not to find a constitutional amendment unconstitutional, limit its meaning along the lines I have suggested as well as others I have not thought of.

I hope these comments are of some use to you, with the thought that since I have made these suggestions, you have a right to demand if you and the others see any merit to what I have said, that I participate with you in whatever changes have to be made.

With warm personal regards.

Sincerely,

Carl Rachlin
General Counsel

CR:n

CC:To
Robert Carter, Esq.
Jack Greenberg, Esq.
Marvin Karpatkin, Esq.
Sol Rabkin, Esq.

Ford, Folak vs Scalos, Charles T et al Oct, 1964

Please Return Original Order

IN THE CHANCERY COURT OF MARSHALL COUNTY, MISSISSIPPI

DULAN MATTHEWS, JR.,.....PLAINTIFF	)	
	)	
VS.	)	CAUSE NO. [illegible]
	)	
CHARLES T. COLLIE, THE WHITE CITIZENS'COUNCIL, THE COUNCIL OF FEDERATED ORGANIZATIONS (COFO) AND MISSISSIPPI FREEDOM,.....DEFENDANTS	)	
	)	
	)	
	)	

AMENDMENT TO AMENDMENT TO ORIGINAL DECLARATION

Comes now the Plaintiff, by and through his Attorney of Record, John R. Parker, and by agreement files this his amendment to the amendment to the Original Declaration, in the above styled and numbered cause.

For the purpose of convenience and for the sake of clarity, Plaintiff reiterates, reaffirms, readopts and incorporates all of the allegations and averments contained in the Original Declaration and Amendment thereto, which are asked to be made a part hereof as though fully copied herein.

In addition thereto, Plaintiff will commence numbering this Amendment taking up after the last paragraph of the said prior amendment.

By way of further Amendment, the Plaintiff would show the following:

12. 4 4 6

That the Defendant, The National Association for the Advancement of Colored People (also known as the NAACP) is a foreign corporation, organized and domiciled in a State other than the State of Mississippi and as far as

Plaintiff is advised said Defendant is a corporation organized and existing under the laws of the State of New York and may be served with the process of this Court in the City of Jackson, Hinds County, Mississippi, by service being made upon its Mississippi resident agent [illegible] at 1327 West Lynch Street, Jackson, Mississippi.

That at the time of the wrongs complained of, said Defendant, The National Association for the Advancement of Colored People was a joint venturer in, and a member of, the Council of Federated Organizations in Mississippi.

That the Defendant, The Congress of Racial Equality (also known as CORE), is a foreign corporation, organized and domiciled in a State other than the State of Mississippi and so far as Plaintiff is advised is a corporation organized and existing under the laws of the State of New York and may be served with the process of this Court, in the City of Jackson, Hinds County, Mississippi, by service being made upon its Mississippi resident agent Dick Sennett at 1714 Roosevelt Avenue, Jackson, Mississippi.

That at the time of the wrongs complained of, said Defendant, The Congress of Racial Equality (also known as CORE) was a joint venturer in, and a member of, the Council of Federated Organizations in Mississippi.

That the Defendant, The Southern Christian Leadership Conference (also known as SCLC) is a foreign corporation, organized and domiciled in a State other than the State of Mississippi and so far as Plaintiff is advised is a corporation organized and existing under the laws of the State of Georgia and may be served with the process of this Court, in the City of Jackson, Hinds County, Mississippi, by service being made upon its Mississippi resident agent, Allen L. Jenkins, at 1327 West Lynch Street, Jackson, Mississippi.

That at the time of the wrongs complained of said Defendant, Southern Christian Leadership Conference was a joint venturer in, and a member of, the Council of Federated Organizations in Mississippi.

That the Defendant, Student Nonviolent Co-ordinating Committee (also known as SNCC) is an unincorporated association and is a voluntary association and consists of many persons, and by reason of the foregoing could conveniently be numerous and the individual personal connections were not generally unknown, is to be considered by bringing all members before this Court.

That, at the time of the wrongs complained of and Defendant, Student Nonviolent Co-ordinating Committee was a joint venturer in, and a member of, the Council of Federated Organizations and that Defendant, Cleveland Sellers was the agent, servant and employee of said Student Nonviolent Co-ordinating Committee upon whom process in this matter has already been had.

Plaintiff again re-iterates, reaffirms, reshapes and incorporates all of the allegations, averments, charges and prayer of the Original Declaration and the Amendment filed therein.

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

I, John B. Pierce, Attorney of Record for Plaintiff, Ralph Richmond, Jr., in the above styled and numbered cause, do hereby certify that I have this day mailed a copy of the above and foregoing Response to Amendment to Original Declaration, to Honorable L. H. Hemphill, First Asst Atty, postage prepaid, at his address, Suite 405, 310 East Capitol Street, Jackson, Mississippi, Attorney for Defendant, Charles T. Noble, Cleveland Gallery, the Council of Federated Organizations (COFO), Robert Flynn, and The United Defendants of Mississippi, on this the 7th day of May, 1965.

John B. Pierce

Ralph Richmond, Jr.

[redacted]

I, John B. Pierce, Attorney of Record for Plaintiff, Ralph Richmond, Jr., in the above styled and numbered cause, do hereby certify that I have this day mailed a copy of the above and foregoing Response to Amendment to Original Declaration, to Honorable L. H. Hemphill, First Asst Atty, postage prepaid, at his address, Suite 405, 310 East Capitol Street, Jackson, Mississippi, Attorney for Defendant, Charles T. Noble, Cleveland Gallery, the Council of Federated Organizations (COFO), Robert Flynn, and The United Defendants of Mississippi, on this the 7th day of May, 1965.

John B. Pierce

Ralph Richmond, Jr.

IN THE CIRCUIT COURT OF MARSHALL COUNTY, MISSISSIPPI

FEBRUARY 1965 TERM

IZIAH RICHMOND, JR. ..... PLAINTIFF VS. CHARLES T. SCALES, THE HERTZ CORPORATION, THE COUNCIL OF FEDERATED ORGANIZATIONS (COFO) AND DEBORAH FLYNN.....DEFENDANTS	CAUSE NO. 6123

DECLARATION

Comes now the Plaintiff Iziah Richmond, Jr., and complains of and sues the Defendants, Charles T. Scales, a resident of Benton County, Mississippi, The Hertz Corporation, a foreign corporation organized and domiciled in a state other than the State of Mississippi, as hereinafter set forth, The Council of Federated Organizations, (COFO) of Holly Springs, Marshall County, Mississippi and Deborah Flynn, a resident of New York City, New York, in an action for damages, and as basis for his action would show unto this Honorable Court the following, to wit:

1.

Plaintiff would show that he is Iziah Richmond, Jr., an adult resident citizen of Memphis, Shelby County, Tennessee and that his place of residence, post office and mailing address is: Iziah Richmond, Jr., 1873 Kendale, Memphis, Tennessee.

That the Defendants are Charles T. Scales, an adult resident of Benton County, Mississippi; The Hertz Corporation, a foreign corporation organized and domiciled in a state other than the State of Mississippi, and so far as this Plaintiff is advised said Defendant is organized under the laws of the State of Delaware and has as its home office 229 South State Street, Dover, Maryland, that, however, said Defendant Hertz

Code of 1942, Recompiled, as amended, the said agent being Honorable Robert Lehner, Secretary of State of the State of Mississippi, an adult resident citizen of Hinds County, Mississippi.

8. Dda

Complainant would show that on or about the 11th day of July, 1964, the Defendant Deborah Flynn, rented an automobile, being the automobile which was involved in the collision with the Plaintiff, as will be hereinafter set forth in particularity, from the Defendant The Hertz Corporation, at one of its rental agencies in Memphis, Tennessee. That at such time and place, the Defendant Deborah Flynn rented this automobile from the Defendant, The Hertz Corporation, for use for and in connection with the United Federation of Teachers, Mississippi Project. That said Defendant, The Hertz Corporation, knew or by the exercise of reasonable diligence should have known that at the time of the rental of said automobile there was in Mississippi considerable agitation, disturbance and trouble instituted by outside influences, coming into the State of Mississippi and attempting to stir up racial disorder and conflict among the two races, which had been living side by side in content and harmony.

That it was common knowledge that these outside influences were so stirring up feelings that trouble and violence were inevitable. That the Defendant, Deborah Flynn, rented said automobile from Defendant, The Hertz Corporation, that in addition to informing the Defendant that the car was being rented for The Mississippi Project that she further gave her address in Holly Springs, Marshall County, Mississippi as her home college. That Defendant, The Hertz Corporation, knew, or by the exercise of reasonable diligence should have known that Rust College was the headquarters for the outside influences coming into the State of Mississippi causing said racial disturbances. That headquartered at Rust College in the City of Holly Springs, Marshall County, Mississippi was Defendant, Cleveland Sellers, Project Director for The Council of Federated Organizations, whose primary work was known as the Mississippi Project. That widespread

corporation is qualified and licensed to do business in the State of Mississippi as a foreign corporation and has appointed and designated as its registered agent upon whom process may be served, The Prentice-Hall Corporation System, Inc., a corporation, with its registered office in said state located in the Robinson Building, Jackson, Mississippi; Charlotte Schoen, as Project Director for and on behalf of The Council of Concerned Organizations, currently known as and hereinafter referred to as CCOS, which defendant does being an unincorporated association, all subscribing as officers in the city of Daily Spotlight, Marshall County, Mississippi and being as the Project Director and head thereof and the person upon whom service of process may be had, Charlotte Schoen, as agent and officer of Marshall County, Mississippi; and Rebecca Flynn, an adult resident citizen, concerning of the State of Mississippi and an adult resident citizen of the State of New York, whose post office, street and mailing address is Rebecca Flynn, 22 Livingston Street, New York City, New York.

2. D & a

Plaintiff would show that at the time of the wrongful bodily injury complained of that his Mishandset, Charles T. Hughes, was operating a motor vehicle, to-wit: a 1968 Chevrolet 4 door Sedan automobile, bearing Tennessee 1968 license Tag No. TZ5-19 on the highways of the State of Mississippi, said automobile being owned by The Hertz Corporation, a foreign corporation organized and domiciled in the State of Maryland, said defendant The Hertz Corporation having owned said automobile to Defendant Rebecca Flynn, representative of the State of Mississippi under the conditions and circumstances hereinafter set forth and said Charles T. Hughes being an agent, servant and employee of Defendant CCOS, also agents, employees and servants of Defendant, Rebecca Flynn, acting in concert with, and under a common venture with, as will hereinafter be shown, and that as such venture defendants, The Hertz Corporation and Rebecca Flynn by the use of said automobile by their agents, servants and employees had thereby appointed the Secretary of State of the State of Mississippi as their agent for service of process by virtue of the provisions of Section 2822-01 of the Mississippi

publicity has been given the CORE intervention into the racial questions in Mississippi and that the Defendant, The Hertz Corporation, knew or by the exercise of reasonable diligence should have known that CORE and its agents and employees were involved in the racial questions and that they were operating under what was known as The Mississippi Project.

Plaintiff would further show that Defendant Charles T. Scales was an agent, servant and employee of CORE and Defendant, Deborah Flynn.

Plaintiff would further show that, as aforesaid, Defendant, Deborah Flynn, had rented the automobile involved in the collision from Defendant, The Hertz Corporation, for The Mississippi Project and that thereafter she drove to Holly Springs, Mississippi and began working with CORE in the racial question.

That on the day of the accident, Defendant Charles T. Scales and one Wayne C. Yancey, were agents, servants and employees of both CORE and Defendant, Deborah Flynn, and that they were acting for and in the course of their employment and as agents for both CORE and Defendant, Deborah Flynn, at the time of the collision.

4.

Plaintiff would show that at the time of the accident, Defendant Charles T. Scales was acting as the agent, servant and employee of Defendant Deborah Flynn and Defendant Thomland Hollers, Project Director of The Council of Federated Organizations, within the scope of his employment and in the furtherance of the business of both Defendant Deborah Flynn and The Council of Federated Organizations.

At the time in question said Defendant Charles T. Scales and one Wayne C. Yancey were returning from Memphis, Tennessee where they had performed the following duties as agents, servants and employees of Defendants Deborah Flynn and CORE.

On the day of the accident, Defendant Charles T. Scales, together with Wayne C. Yancey were returning from the Memphis, Tennessee Municipal Airport where they had taken two workers, who were returning to their homes from their work in The Mississippi Project. That this was in

connection with the work for which Defendant, Roberch Flynn, had rented the automobile. That in addition thereto, Defendant Charles T. Easley and said Wayne C. Massey had, in connection with their duties as agents, servants and employees of CORPO purchased in Memphis, Tennessee two automobile tires for use on a VOLVO make automobile, which was being used by CORPO in its Mississippi Project work.

3.

On Saturday the 1st day of August, 1964, at approximately 3:30 P.M. the Plaintiff was injured in an accident which occurred in Marshall County, Mississippi. The accident happened under the following circumstances and conditions.

The plaintiff was operating a 1962 Mercury Sedan automobile, bearing Tennessee 1964 License Tag No. 6A 2TW-179, which was owned by his wife Ann Smith Richmond, in a northwesterly direction along U. S. Highway No. 78, approximately one mile East of the town of Red Banks, Marshall County, Mississippi. U. S. Highway No. 78 is a paved two lane highway running in a northwesterly-southeasterly direction. At the above time and place and at all times prior thereto, Plaintiff was operating his automobile at a reasonable and prudent rate of speed, well within the limits fixed by law and in a careful and prudent manner, observing and abiding by the rules of the road. No was alone at the time of the accident.

At the above time and place the Defendant, Charles T. Easley was operating the 1963 Chevrolet Sedan, bearing 1964 Tennessee License Tag No. 2TA-18. Said automobile which defendant Easley was driving being owned by Defendant, The Berg Corporation, and rented to Roberch Flynn. That in the car being operated by Defendant Easley was one Wayne C. Massey and that at this time and place, as aforesaid, Defendant Easley and Massey were returning from Memphis, Tennessee where they had taken two tractors to the Memphis Municipal Airport in Memphis, Tennessee, and after they had purchased the two tires for delivery back to CORPO and Berg, were at that time and place agents, servants and employees of both Defendant Roberch Flynn and CORPO, within the scope of their employment and in furtherance of the business of said Defendants Flynn and CORPO.

Plaintiff would show that at the given time and place, as the Defendant Charles T. Seales approached the car in which plaintiff was riding, said Defendant was driving some sixty five (65) miles per hour and at an excessive and dangerously high rate of speed. That at this time both the Defendant and Plaintiff were approaching the crest of the same hill, although going in opposite directions. That the Defendant Charles T. Seales, still travelling at an excessively and dangerously high rate of speed, at the crest of the hill, undertook to pass another vehicle, without first ascertaining that there was no vehicular traffic approaching from the opposite direction. That just as the Defendant attempted to pass this other vehicle, which was proceeding in the same southbounderly direction as Defendant, he drove into the lane of traffic and directly into the path of and struck the automobile driven by the Plaintiff, causing severe and painful injuries and damages to the Plaintiff as will hereinafter be shown with more particularity.

6. A 4 &

Plaintiff charges that it was the duty of the Defendant, Charles T. Seales, to exercise reasonable care in the operation of his car, to obey the rules of the road, to drive such car at a reasonable rate of speed under the conditions and circumstances then and there existing on the highway, to decrease his speed upon approaching another vehicle or when approaching the crest of a hill and not to overtake or pass another vehicle travelling in the same direction when approaching the crest of a grade in the highway where the driver's view along the highway is obstructed, to keep his vehicle under free, easy and reasonable control, to yield the right of way under the conditions and circumstances then existing and to move to one side to avoid hitting oncoming vehicles, all of which Defendant Charles T. Seales failed to do.

A

Plaintiff charges that immediately prior to and at the time of the collision the Defendant Charles T. Seales was negligent in the following particulars which proximately caused and proximately contributed to the collision, injuries and damages to the complainant Ralph Richmond, Jr.

C

(a) In driving his automobile at over sixty five (65) miles per hour and at an excessive and unreasonable rate of speed under the conditions and circumstances then and there existing.

(b) In failing to keep a careful lookout ahead, especially for the oncoming car which the Plaintiff was driving.

(c) In attempting to pass a vehicle proceeding in the same direction, on the left side thereof on a two lane highway, without first ascertaining that such left side was clearly visible and free of oncoming traffic for a sufficient distance ahead to permit such overtaking and passing to be completely made without interfering with the safe operation of any vehicle approaching from the opposite direction.

(d) In failing to decrease his speed when approaching the crest of a hill, or when special hazards existed with respect to other traffic.

(e) In driving over the center line of the two lane highway and causing his automobile to collide with the automobile operated by the Plaintiff.

(f) In failing to have his automobile under reasonable and proper control under the circumstances.

(g) In failing to give to Plaintiff proceeding in an opposite direction, at least one half of the main traveled portion of the roadway.

That all of the aforesaid negligence on the part of the Defendant, Charles T. Beales, proximately caused and proximately contributed to the injuries and damages sustained by the Plaintiff.

7.

Plaintiff would further show and charge that as a direct, immediate and proximate result of the said acts of negligence on the part of Defendant, Charles T. Beales then acting as agent, servant and employee of Defendants Flynn and CUPE and within the scope of his employment and in furtherance of the business of said Defendants, said Plaintiff was seriously, painfully, critically and permanently injured.

Plaintiff would show that the collision was so great that the passenger in the Beales automobile, Wynne C. Yancey, was killed instantly. That Plaintiff suffered the following injuries.

Plaintiff suffered a triangle fracture, bilateral mandibular fracture as well as neck, back and shoulder injuries. In addition thereto, Plaintiff suffered lacerations of his right knee, multiple contusions and abrasions of his body as a whole and multiple lacerations of his face. That as a result thereof and immediately after the accident he was taken to the North Mississippi Hospital at Holly Springs, Mississippi where he was given emergency treatment and later transferred to the John Gaston Hospital in Memphis, Tennessee where he remained hospitalized from August 1, 1964 to August 21, 1964. That the injuries sustained by Plaintiff have been so severe and excruciating that Plaintiff was not able to work at his gainful occupation until November 1, 1964 and that as a result thereof said Plaintiff lost Eight Hundred ($800.00) Dollars in lost salaries.

That the injuries sustained have been so severe and Plaintiff has been so seriously and permanently injured through the negligence of the Defendants, that he will never again enjoy the health and physical strength with which he was endowed prior to the time of this accident. Complainant would further show that as a direct and proximate result of the negligence of the Defendants that he has incurred substantial expenses and hospital expenses and will continue to incur medical and hospital expenses throughout the balance of his life as a result of the injuries sustained by him as a result of the aforesaid negligence of the Defendants. That his left leg was so badly damaged that it is now smaller than his right leg.

Plaintiff would further show that his face and head were so badly damaged that his entire appearance has changed and that he does not look like the same person he was prior to the accident. That additional and expensive plastic surgery will be required and that the future medical and hospital expenses will be considerable. That he has endured and will continue to endure excruciating physical pain and mental anguish.

That at the time of the accident he was only 33 years of age, in the prime of his life and that as a result of said accident and his injuries resulting therefrom, he is partially and permanently disabled.

[illegible]. Plaintiff [illegible] and demands judgment against the defendants, jointly and severally in the sum of One Hundred Fifty Thousand ($150,000.00) Dollars together with all costs herein.

JACK L. [illegible]
[illegible], [illegible]

JOHN D. [illegible]
[illegible], [illegible]

[illegible]

MEMORANDUM

From: Henry W. Sawyer III

To: Alvin J. Bronstein

Re: Richmond v. Scales, et al

I do not recommend settlement at $10,000 from civil rights organizations at this time. I assess the risks as not warranting the payment of this amount.

Plaintiff has charged that the various civil rights groups named by him were joint adventurers (Mississippi for joint venture), the adventure being the operations of COFO. Another way of looking at it is a suit against the members (CORE, NAACP, etc.) of an unincorporated association (COFO), although it is not so pleaded.

If the law of Mississippi is fairly applied we should not have too much trouble with the doctrine of joint adventurers, per se.

The principal Mississippi case which discusses what a joint adventure is, is Sample v. Romine, 8 So.2d 257 (Sup. Ct. Miss., 1942) where the court said:

> "While perhaps no exact definition of a joint adventure can be given, nor can a general rule be laid down by which the question as to what amounts to a joint adventure can be answered, the answer in each case depending on the terms of the agreement, the acts of the parties, the nature of the undertaking and other facts... some definitions have been attempted.
>
> "A jt. adv. has been broadly defined as an enterprise undertaken by several persons jointly, and, more particularly, as an association of two or more persons to carry out a single business enterprise for profit." In Sampson v. Richmond Worsted Spring Co., 128 Me 22, 145 A 250, 253 the Court said a "jt. adv." has been defined as 'an association of 2 or more persons to carry out a single business enterprise for profit'.... A federal court said, 'joint adventure' exists where two or more persons combine in a joint business enterprise for their mutual benefit with understanding that they are to share in profits or losses and that each is to have a voice in its management.'" Chisholm v. Gilmer, 299 U.S. 99, reh. den. 299 U.S. 623."

The continual reference to the characteristics of "business enterprise" for "profit" is consistent with black letter text references. Later in the opinion in the Sample

case the court said there "must be a joint proprietary interest..." and that "an agreement, express or implied, for sharing in profits is essential to a joint adventure."

More recently the Mississippi Supreme Court repeated the same definition in Boxwell v. Champagne, 91 So.2d 256 (Miss. 1956): "Joint adventure may be said to be an association of two or more persons to carry out a single business enterprise for profit." (Lee, J.)

Quite clearly the concept is one of commercial law concerned with economic rights inter sese and contract liability to those doing business with the individuals in the venture. Vicarious tort liability is nowhere suggested in the discussions of the nature of a joint adventure.

On the other hand, the first paragraph quoted above from the Mississippi case of Sample v. Romine, supra, does speak of the difficulty of defining a joint adventure and goes on to say that what constitutes a joint adventure depends, among other things, on the "nature of the undertaking", and one can visualize the Mississippi court hanging their hat on just this language.

Any liability of CORE must be vicarious, in any event, and it would normally rest on a doctrine of respondeat superior. As I have the facts, it cannot so rest because the driver was not employed by CORE, being a COFO worker driving a car leased by the United Federation of Teachers, so that COFO not being an entity, the only way any civil rights groups with funds can be reached is via the joint adventure concept, (or as members of an unincorporated association).

It seems to me to be relevant, in deciding whether to put up matching funds with Hertz, to know how solidly Hertz is on the hook. If their liability is clear one might be more inclined to sit back and not settle. The complaint seeks to involve Hertz by allegations that it knew or should have known that the car was to be used for the Mississippi Project and the actual lessee Deborah Flynn and the V.F.T. admits this fact in their Answer. Complaint further pleads Hertz knew or should have known of connection in Mississippi caused by Mississippi Project, centered at Rust College, the address given Hertz by the lessee.

This pleading would appear to be necessary under Mississippi law. I found no statute governing the liability of owners generally and a number of cases stating the familiar rule in the absence of statute:

> "... when the owner of an auto permits its use by a person known to the owner to be a reckless or incompetent driver, or where by the exercise of reasonable care the

owner could or should have so known, the owner is liable ...etc." Levy v. McMullen, 169 Miss. 659.

This doctrine is current Mississippi law. Peterman v. Cary, 49 So.2d 828 (1951).

Although the obvious intent of the pleading is to place Hertz within this rule, the facts do not. Accepting the pleading as true, i.e. that Hertz knew the car was being rented by trouble makers, the pleading founders on the scope of foreseeable harm doctrine since the alleged negligence was not caused by or connected with the risks involved in the Mississippi Project.

Barring some arrangement under which Hertz's insurance covers liability of Hertz lessees (they being a third party beneficiary of that contract of insurance), it would not appear that Hertz is necessarily liable. If this is so one would incline towards settlement.

But what seems to me to be the most important fact is one I have not been able to specifically find out: does Hertz have an insurance arrangement similar to that mentioned above. If so, Hertz's liability, qua Hertz is immaterial. A judgment against Scales, the driver, would be paid by Hertz's insurance carrier under such a contract irrespective of whether Hertz is liable on the theory of negligently leasing to troublemakers. Hertz may be interested in settlement because their rates may be affected.

My belief is that such a contract exists because it seems to be required by Mississippi law. The Motor Vehicle Safety-Responsibility Act, Title 30, Ch. 2, Section 8285 et seq. provides, in § 8285-05(b) that the Department of Public Safety shall, within 60 days of any accident over $50 suspend all registrations of each non-resident owner of the motor vehicle involved including, as to a non-resident owner, the privilege of use within the state of any motor vehicle owned by him unless a sum determined by the Department shall be deposited etc. There is further provision that this section shall not apply if a liability policy covering the car was in effect by the owner or if the owner was a self-insurer under Section 33 [§ 8285-34]. That section provides for self-insurance under certain regulations for woners of more than 25 vehicles lisenced within the state.

We may surely conclude that Hertz was either insured or a self-insurer and that the insurance, being for the benefit of the driving public of Mississippi, would indemnify by paying any judgment against the driver rather than being dependant on Hertz's own liability for its negligence.

This, then, leads us to consider one of Hertz's defenses. No responsive pleading on Hertz's behalf appears in the file, but I have been given to understand that Hertz's lawyer has indicated a defense based on a breach of the contract of insurance in some respect. I very much doubt if this defense would prevail, for this is not the ordinary situation of a contract of insurance entered into by the insured to indemnify him for his protection. If I read the Mississippi Responsibility Act correctly such a policy (or self-insurance) must be in effect by requirement of law for the benefit of injured third parties, from which it would follow that the protection to those third parties could not be avoided by any "breach" between owner and lessee.

This analysis is necessarily based on some conjecture as to some of the facts. With that caveat, however, it would appear that Hertz is well hooked. If so, one would be inclined not to contribute as much as 50% to a settlement. My judgment is that the risks of CORE ultimately having to satisfy a judgment are remote. On the other hand the magnitude of the risk is potentially high in dollar amount. Hertz's risk is both likely and high. We should hold out for no more than a Hertz - $15,000; Civil Rights groups $5,000 division.

Henry W. Sawyer III

July 7, 1965

IN THE CIRCUIT COURT OF MARSHALL COUNTY, MISSISSIPPI

IN VACATION 1965

ISIAH RICHMOND, JR.,.....PLAINTIFF	)	
V.	)	
CHARLES T. SCALES, THE HERTZ CORPORATION, THE COUNCIL OF FEDERATED ORGANIZATIONS (COFO), DEBORAH FLYNN, THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, THE CONGRESS OF RACIAL EQUALITY, THE SOUTHERN CHRISTIAN LEADERSHIP CONFERENCE, AND STUDENT NONVIOLENT CO-ORDINATING COMMITTEE,.DEFENDANTS	)	NO. 6323

ORDER OF DISMISSAL

This day this cause came on to be heard, in Vacation, pursuant to a previous order of this Court entered at the Regular November 1965 Term of the Circuit Court of Marshall County, Mississippi.

It appears to the satisfaction of the Court that the matter in controversy has been settled and that Plaintiff has moved for a dismissal of the action against all Defendants, with prejudice.

NOW, THEREFORE, IT IS HEREBY ORDERED AND ADJUDGED that the above styled and numbered cause be and the same is hereby dismissed as against all defendants, with prejudice at the cost of the Plaintiff.

ORDERED AND ADJUDGED this the 6th day of December, 1965.

Walter L. Ogburn
CIRCUIT JUDGE

APPROVED:

John B. Farese
Attorney for Plaintiff

THE STATE OF MISSISSIPPI
MARSHALL COUNTY

I, Ottis N. Clayton, Clerk of the Circuit Court, in and for the State and County aforesaid, do hereby certify that the foregoing is a true and correct copy of the original of said instrument, as fully and completely as the same appears of record in my office.

Given under my hand and seal, this the 7th day of Dec, 1965

Ottis N. Clayton
Circuit Clerk

By [illegible]

Minute Book 13
Page 419 and 420.

FINAL RELEASE AND SETTLEMENT OF CLAIM

FOR THE SOLE CONSIDERATION of SIXTEEN THOUSAND and no/100 DOLLARS ($16,000.00) to us in hand paid by Charles T. Scales, The Hertz Corporation, The Council of Federated Organizations (COFO), Deborah Flynn, The National Association For the Advancement of Colored People, The Congress of Racial Equality, The Southern Christian Leadership Conference, and Student Nonviolent Co-ordinating Committee hereinafter called payors, the receipt of which is hereby acknowledged, we Isiah Richmond, Jr., and wife, Ann Smith Richmond of 1873, Kendale Street, Memphis, Tennessee, being of lawful age, do hereby release, acquit and forever discharge the said payors, their agents and employees, and all other persons, firms or corporations who are or might be liable, from any and all actions, causes of actions, claims, demands, damages, costs, loss of services, loss of consortium, expenses, and compensation on account of or in any way growing out of any and all known and unknown personal injuries and property damages, resulting or to result from an accident that occurred on or about the 1st day of August 1965 by reason of a collision which occurred on U. S. Highway No. 78, approximately one mile east of Red Banks, in Marshall County, Mississippi, when the car operated by Charles T. Scales collided with a car owned by Ann Smith Richmond and operated by Isiah Richmond, Jr., including any other claims that we may have which arose at the time of or prior to such accident, and do hereby for ourselves, heirs, executors, administrators, successors and assigns, covenant with the said payors their agents and employees, and all other persons, firms or corporations which are or may be liable to indemnify and save them harmless from all claims and demands, costs, loss of services, loss of consortium, expenses and compensation on account of or in any wise growing out of said accident or its results, known and unknown, or prior claims, both to persons and property.

We know and understand that the injuries sustained may be permanent and progressive and recovery therefrom is uncertain and indefinite and there may be injuries or results of injuries not yet evident, recognized or known and in making this release, we rely wholly upon our judgment, knowledge and

belief as to the nature, extent and duration of said injuries and as to the questions of liability involved and have not been influenced by any representations regarding the same; that the chims are doubtful and disputed and the above consideration is accepted in full compromise, accord and satisfaction thereof, and the payment of said consideration is not an admission of liability.

This release and settlement executed this the 6th day of December, 1965.

Isiah Richmond Jr.
Isiah Richmond, Jr.

Ann Smith Richmond
Ann Smith Richmond

APPROVED:

John B. Farese
John B. Farese
Ashland, Mississippi
Attorney for Claimants

STATE OF TENNESSEE

COUNTY OF SHELBY

On this 6th day of December, 1965, before me personally appeared Isiah Richmond, Jr., and wife, Ann Smith Richmond, to me known to be the persons described herein, and who acknowledged that they executed the foregoing release voluntarily and for the purposes therein contained.

Grady L. Vaughan
NOTARY PUBLIC

(SEAL)

My commission expires: My commission expires Nov. 20, 1967

THE FOLLOWING DOCUMENTS ARE THE

BEST AVAILABLE.

ANTHONY F. JEROME, M. D.
[illegible]

Mr. Jack L. Halliburton
Attorney at Law
[illegible] Building
Memphis, Tennessee

Re: Iolah Richmond

Dear Mr. Halliburton:

This is an interesting medical [illegible]

[illegible] point out the following physical [illegible] course, Iolah [illegible] finding has [illegible] per cent [illegible] twenty-five per cent [illegible] remaining twenty-five per cent remains an issue as the effect of the orbit [illegible] correction. In this case all I can say is that this question can not be answered until a full year has elapsed. If at the end of a year the diplopia is still present, then it should be regarded as permanent.

Another physical impairment is inability to completely open the mouth. Because of the nature of these fractures I regard this finding as permanent. I am at a loss in translating this in terms of disability, but I would say that there is loss of impairment to the mandibular chewing-apparatus of twenty-five per cent.

RECEIVED
NOV 1 1985
MEMPHIS, TENN.

November 3, 1964

Mr. Jack Halliburton, Attorney
61 Madison Building
Memphis, Tennessee

Re: Mr. Isiah Richmond, Jr.
1873 Kendale
Memphis, Tennessee

Dear Mr. Halliburton:

Since my letter to you dated September 12, 1964, I again saw Mr. Isiah Richmond on October 13, 1964 at which time he was unable to open his mouth fully. The teeth on the right side closed before those on the left side of the mouth. There was also some stiffness of the right knee, but the examination of the right knee was negative. There was also a deformity noticed of the left orbit. I referred him to Dr. Joseph Blockman, a dentist, for further evaluation.

It was Dr. Blockman's opinion that Mr. Richmond's bite had changed due to the fractures of the mandible and that he will require a partial prosthesis of the upper and lower teeth in order to chew his food, which he is unable to do at the present time due to the fact that the bite has changed. He estimated that the cost of this is approximately $300.00.

It is my opinion that Mr. Richmond has partial permanent disability of three months, and a partial temporary disability of one month. It is further my impression that the double vision which he is manifesting will take time to decide if this is going to be on a permanent nature, which could be entirely possible. In addition, I believe there is approximately fortY percent loss of function to the mandibular chewing apparatus which is of a permanent nature.

In addition to my diagnosis stated to you on September 12, 1964 and in this letter, it is my opinion that Mr. Isiah Richmond sustained a cerebral concussion in his accident. It is also possible that because of the depression of the wall of the maxillary sinus that Mr. Richmond may have chronic sinusitis from this time on.

Enclosed is my bill for services to date along with an authorization of assignment of benefits for any medical payment to be paid directly to me.

RECEIVF

NOV - 6 1964

MEMPHIS CL. DEPT

Sincerely yours,

Aaron A. Shatzky, M. D.

AASch
Enclosure 2

Defense Examination

14 December 1964

The Royal Globe Insurance Companies
2087 Union Avenue
Memphis, Tennessee

Attention: Mr. Pepper

Re: Isiah Junior Richmond

Dear Mr. Pepper:

I want to give you the medical report which you requested on your claimant, Isiah Junior Richmond.

As you know, this patient was injured in an automobile accident on 1 August 1964. Soon after the accident, he was admitted to the North Mississippi Hospital in Holly Springs and at that time was seen and treated by a local physician. The patient did not know this physician's name. The multiple lacerations of his face were sutured, and he was then referred to the John Gaston Hospital here in Memphis. He was admitted there on 1 August 1964. The lacerations of his right knee were sutured soon after admission. He was found to have a fracture of his mandible and a fracture of the left malar bone. These fractures were reduced and immobilized on 7 August 1964. In the surgical procedure, he had an open reduction of the mandible and an open reduction of the zimalar fracture on the left. He also had interdental wires placed about his teeth. He was discharged from the hospital on 22 August 1964. After his discharge from the hospital, he was seen weekly by Dr. Anthony Jerome. He was readmitted to the Crump Hospital on 28 October 1964 and, on the following day, he had a revision of the scars of his left infraorbital cheek region. He was discharged from the Crump Hospital on 31 October 1964 and was again followed by Dr. Jerome. His interdental wires were removed in the seventh postoperative week, and he has done well since then. He was last seen by Dr. Jerome on 11 November 1964.

I saw this patient for the first time on 12 November 1964. At that time, he was found to have a "v-shaped" scar of the forehead, which was one and one-half inches by one inch. It was four millimeters wide, red, indented, and indurated. There was a scar along the left lateral eyebrow region which was two inches long.

slightly depressed. There was a scar beneath the eye on the left, which was about one and one-half inches long and was bound down to the underlying structures. There was a "v-shaped" scar of the left cheek, which was evulsion-type; this scar was one-half inch by one-half inch. There was a three-inch scar along the left neck. These scars were healing satisfactorily and showed no tendency to hypertrophy. On further examination, the patient was found to have good dental occlusion, and there was only a slight asymmetry of the infraorbital ridges. On examination of the eyes, the extra-ocular muscles were intact and functioning properly, and there was no diplopia in any gaze.

I feel that further surgery could be performed to revise the scars as indicated above; however, I do not feel that any further surgery is indicated in regards to the patient's mandible or his cheekbones.

Photographs were taken at the time of the patient's consultation, and these are available if needed. If I can give you any additional information in regards to this patient, please feel free to call upon me at any time.

Sincerely yours,

J. Robert Vincent, M.D.

JRV/mj

cc: Mr. John D. Farese
Attorney at Law
Ashland, Mississippi

Royal Globe Insurance
COMPANIES

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February 5, 1965

2087 UNION AVENUE
MEMPHIS, TENN. 38122
PHONE: 274-9100

Mr. William M. Kunstler,
Kunstler, Kunstler & Kinoy
Attorneys at Law
511 5th Ave.,
New York, N.Y. 10017

Re: R4-80A-08049
Hertz - Insured
Isiah J. Richmond - Claimant
D/A: 6-1-64

Dear Mr. Kunstler:

This will confirm our telephone conversation of today, 2-5-65, with regard to your client Mrs. Deborah Flynn and your client, the Council of Federated Organizations. This will confirm the position I stated to you in my telephone conversation, namely, that the Royal Indemnity Company as insurance carrier for the Hertz Corp. after careful investigation and consideration is taking the position that there is no coverage afforded under the policy issued by the Royal Indemnity Company for either Mrs. Flynn or the Council of Federated Organizations, or the driver Charles T. Scales. One of the reasons upon which we base our denial of coverage is the fact that this car was being operated at the time of the accident by an unlicensed driver in violation of the rental contract with the Hertz Corporation. There are other reasons which I will enumerate here.

At your request I am attaching all of the medical reports that I have in my file. The report of Dr. Robert Vincent is an examination report that was arranged and paid for on behalf of the defendant, Hertz Corp. (whom we do cover and insure under our policy).

It is my understanding that you will arrange for the defense of the driver, Charles Scales.

As I stated to you in our telephone conversation I feel that it is essential that all defendants cooperate as is consistent with their interest and you may be assured of our cooperation in this connection.

Thanking you again for your courtesy, I am,

Yours very truly,

N. E. Pepper
Claim Attorney

NEP:rb
Encl.

Royal-Globe Insurance
COMPANIES

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REGARD INSURANCE COMPANY • AMERICAN AND FOREIGN INSURANCE COMPANY • BRITISH & FOREIGN MARINE INSURANCE COMPANY • THAMES & MERSEY MARINE INSURANCE COMPANY

February 11, 1965

CERTIFIED MAIL

2087 UNION AVENUE
MEMPHIS, TENN. 38112
PHONE: 274-9100

COFO Headquarters
100 Rust Ave.,
Holly Springs, Mississippi

Re: R4-80A-08049
Hertz Corp. - Insured
Isiah Richmond - Claimant
D/A 8-1-64

Dear Sirs:

You will recall that quite sometime ago you were notified by the Royal Indemnity Company that we were investigating the accident of 8-1-64 on behalf of Hertz Corp., and that we were making such investigation with full reservation of our rights to deny liability under the policy with regard to any action that might be commenced against you. This investigation is now complete and we feel that under the terms and conditions of the policy issued by the Royal Indemnity Company to the Hertz Corp., that no coverage is afforded for you. Therefore, we are notifying you that the Royal Indemnity Company will not afford a defense to the lawsuit that has been filed against you in Marshall County, Mississippi.

We have already discussed this matter with your attorneys Kunstler, Kunstler, & Kinoy. The reason for this notification to you personally is to comply with our company regulations.

Yours truly,

THE ROYAL INDEMNITY COMPANY

BY: _____
N. E. Pepper, Claim Attorney

NEP:rb
CC: Kunstler, Kunstler, & Kinoy

Royal-Globe Insurance
COMPANIES

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February 11, 1965

CERTIFIED MAIL

2087 UNION AVENUE
MEMPHIS, TENN. 38122
PHONE: 274-9100

Miss Deborah Flynn
38 Livingston St.,
New York, N. Y.

Re: R4-80A-08049
Hertz Corp. - Insured
Isiah Richmond - Claimant
D/A: 8-1-64

Dear Miss Flynn:

You will recall that quite sometime ago you were notified by the Royal Indemnity Company that we were investigating the accident of 8-1-64 on behalf of Hertz Corp., and that we were making such investigation with full reservation of our rights to deny liability under the policy with regard to any action that might be commenced against you individually. This investigation is now complete and we feel that under the terms and conditions of the policy issued by the Royal Indemnity Company to the Hertz Corp., that no coverage is afforded for you. Therefore, we are notifying you that the Royal Indemnity Company will not afford a defense to the lawsuit that has been filed against you in Marshall County, Mississippi.

We have already discussed this matter with your attorneys, Kunstler, Kunstler, & Kinoy. The reason for this notification to you personally is to comply with our company regulations.

Yours truly,

THE ROYAL INDEMNITY COMPANY

BY: _____
N. E. Pepper, Claim Attorney

NEP:rb
CC: Kunstler, Kunstler, & Kinoy

Royal-Globe Insurance
COMPANIES

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NEWARK INSURANCE COMPANY • AMERICAN AND FOREIGN INSURANCE COMPANY • BRITISH & FOREIGN MARINE INSURANCE COMPANY • THAMES & MERSEY MARINE INSURANCE COMPANY

February 11, 1965

CERTIFIED MAIL

2087 UNION AVENUE
MEMPHIS, TENN. 38122
PHONE: 274-9100

Mr. Charles Scales
613 Alabama St.
Memphis, Tennessee

Re: R4-80A-08049
Hertz Corp. - Insured
Isiah Richmond - Claimant
D/A: 8-1-64

Dear Mr. Scales:

You will recall that quite sometime ago you were notified by the Royal Indemnity Company that we were investigating the accident of 8-1-64 on behalf of Hertz Corp., and that we were making such investigation with full reservation of our rights to deny liability under the policy with regard to any action that might be commenced against you individually. This investigation is now complete and we feel that under the terms and conditions of the policy issued by the Royal Indemnity Company to the Hertz Corp., that no coverage is afforded for you. Therefore, we are notifying you that the Royal Indemnity Company will not afford a defense to the lawsuit that has been filed against you in Marshall County, Mississippi.

Yours very truly,

THE ROYAL INDEMNITY COMPANY

BY: _____
N. E. Pepper, Claim Attorney

NEP:rb

Carl Carter

Lawyers Constitutional Defense Committee, Inc.

Ninth Floor, 156 Fifth Avenue, New York, N. Y. 10010

(212) YU 9-7530

President
LEO PFEFFER
Special Counsel
American Jewish Congress

Vice-Presidents
JOHN M. PRATT
Counsel, Commission on Religion and Race
National Council of the Churches of Christ

CARL RACHLIN
General Counsel
Congress of Racial Equality

Secretary
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The Rev. ROBERT F. DRINAN, S.J.
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Boston College Law School

JACK GREENBERG
Director-Counsel
NAACP Legal Defense and Educational Fund

CLARENCE B. JONES
Counsel to the Rev. Dr. Martin Luther King, Jr.

HOWARD MOORE, JR.
Counsel
Student Non-violent Coordinating Committee

Executive Secretary
HENRY SCHWARZSCHILD

Reply to:

Staff Counsel
ALVIN J. BRONSTEIN
603 North Farish Street
Jackson, Mississippi 39202
(601) 948-4191

May 19, 1965

Carl Rachlin, Esq.
CORE
38 Park Row
New York, N. Y.

Dear Carl:

On May 13 Richard Jewett was served with a summons issued out of the Circuit Court of Marshall County (Holly Springs). He was served as an agent for CORE in a personal injury case involving a Negro school teacher, Isiah Richmond, as plaintiff against Hertz, COFO and Deborah Flynn, defendants. The amount being sued for is $150,000.00.

I spoke to John Farese, the attorney for the plaintiff who advised me that this arises out of an automobile accident which occurred last summer involving a car owned by Hertz and leased to Flynn and driven by a COFO volunteer which went over on the wrong side of the road and badly injured Mr. Richmond. He is alleging a joint venture and is therefore suing CORE as well as SNCC et al as the components of COFO. He is mailing a copy of the complaint to me so that we can prepare an answer which will be due before June 11. He also advises me that Hertz has offered $10,000 and he is seeking contributions from the other defendants.

If CORE has any insurance carrier that should be notified, please do so immediately. I will send you a copy of the complaint when I receive it and would welcome your thoughts on answering. If I hear nothing from you I will assume you wish us to answer on behalf of CORE.

Sincerely yours,

Alvin J. Bronstein

Lawyers Constitutional Defense Committee, Inc.

Ninth Floor, 156 Fifth Avenue, New York, N. Y. 10010

(212) YU 9-7530

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American Jewish Congress

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National Council of the Churches of Christ

CARL RACHLIN
General Counsel
Congress of Racial Equality

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Student Non-violent Coordinating Committee

Executive Secretary

HENRY SCHWARZSCHILD

Reply to: *Mississippi Field Office*
603 North Farish Street
Jackson, Mississippi 39202
(601) 948-4191

ALVIN J. BRONSTEIN
Staff Counsel

May 25, 1965

Carl Rachlin, Esq.
CORE
38 Park Row
New York, N. Y.

Re: Richmond v. Scales, et al

Dear Carl:

We are enclosing a copy of the original declaration (as they call complaints down here), the amendment to the declaration and the amendment to the amendment.

After investigation we have concluded that we cannot remove on diversity grounds because one of the defendants is a resident of Mississippi. We have 30 days from May 13 to answer or move against the pleading and we are working on that now.

Len Rosenthal has appeared for COFO by Motion to Dismiss and has furnished us copies of his answer on behalf of defendants Deborah Flynn and Charles Scales. He has not yet actually filed those answers and we are trying to get him to make some changes, e.g. he admits that NAACP, CORE, SCLC and SNCC were joint venturers in and members of COFO.

I talked with him in his office this afternoon and his position is that it is to the best interest of his clients if all of these organizations are kept in the suit in hopes that they will contribute towards a settlement. He says that the plaintiff's attorney will settle for $20,000, of which Hertz has already offered $10,000.

Al Bronstein is out of town this afternoon but I am going to recommend to him that we attempt to get out of the suit by motion and that if the motion is denied we should perhaps consider the idea of contributing toward a settlement.

Very truly yours,

Norman B. Ackley

Norman Ackley

May 27, 1965

Hon. Paul O'Dwyer
50 Broad Street
New York, N. Y.

Dear Paul:

I know how busy you are so perhaps you could have one of the men in your office answer the questions contained in this letter. Because of your many trips to Mississippi and your knowledge of the organizations there you are in the best position to answer the questions concerning the responsibility of CORE (also NAACP) in an automobile accident case.

The plaintiff is a resident of Memphis who was in an automobile accident (he was driving northerly on Route 78) apparently near Holly Springs, Miss., when a car driven by Charles Scales rented from Hertz in Memphis, crashed into him. For this purpose, assume Scales was solely at fault (I have no knowledge of whether this is true or not). Scales was a COFO worker driving a car rented from Hertz by one Deborah Flynn of the United Federation of Teachers, the car to be used for COFO work in Holly Springs, Miss.

The plaintiff was very severly hurt and out of work for several months. The accident was so severe that a passenger sitting alongside Scales was killed instantly. As a result, the plaintiff has one leg shorter, numerous serious scars, etc. In other words, quite serious injuries.

The complaint is framed in racist terms even though, I gather, the plaintiff is a Negro from Memphis. Throughout the complaint are references that COFO is stirring up trouble, etc.

The original complaint neither named CORE, NAACP, or SNCC or LCHC as defendants but in two amendments to the declaration (complaint) it is alleged that CORE and the other organizations are joint venturers in the Mississippi project.

The complaint attempts to make them defendants by and through defendant Cleveland Sellers who was the project director in and around Holly Springs. It is, of course, clear that COFO is a very loosely-knit organization whose structure is in no way formalized.

CORE had nothing to do with the project in Holly Springs and did

not hire or participate in the hiring of Sellers or of the driver of the car, Scales, and had nothing to do with, in the remotest way, directing either Sellers' activities or Scales' activities, and of course, did not pay them.

I understand that this is similarly true of the NAACP.

The Hertz Corporation is afraid of this case and clearly for very good reasons. It is their car and there may very well be severe liability. They are willing to contribute $10,000. They are asking for contribution from the organizations who are associated with COFO to make up another $10,000. They told us that the case could be settled for that figure. From what I know of the case, $20,000 would be only a fraction of a verdict if the case went to trial.

The question, of course, however, is whether, is the legal responsibility of CORE or for that matter, the NAACP, in the COFO activity in an area over which they had absolutely no control, even though they were participants in an organization called COFO.

I would appreciate your thoughts on this since Al Bronstein, our able attorney in Mississippi, would like the expression from a person such as yourself who has had such tremendous experience in this area.

With kindest, personal regards, I am,

Sincerely yours,

Carl Rachlin

CR:YS

CC: Robert Carter, Esq.
Alvin Bronstein, Esq.

Lawyers Constitutional Defense Committee
Mississippi Field Office
603 North Farish Street, Jackson, Mississippi 39202

(601) 948-4191

ALVIN J. BRONSTEIN
Staff Counsel

JUL 12 1965

July 8, 1965

Carl Rachlin, Esq.
CORE
38 Park Row
New York 38, N. Y.

Re: Richmond v. Scales

Dear Carl:

I have your letter of June 7 which enclosed Paul O'Dwyer's letter. Let's not waste time with that kind of help any more. I am enclosing a copy of a memorandum which we did on this case and I would like to have your thoughts on it as soon as possible.

Sincerely,

Alvin J. Bronstein

AJB:jb

Lawyers Constitutional Defense Committee
Mississippi Field Office
603 North Farish Street, Jackson, Mississippi 39202
(601) 948-4191

AUG 6 1965

ALVIN J. BRONSTEIN
Staff Counsel

August 4, 1965

Richmond v Scales

Mr. Carl Rachlin
General Counsel
Congress of Racial Equality
38 Park Row
New York, New York

Dear Mr. Rachlin:

This leter will be long because it will recite my understanding of the factual situation in the case of Richmond v. Scales, COFO, et al in the Circut Court of Marshall County, #6323.

FACTUAL SITUATION

Although I have not been able to talk to Deborah Flynn or Charles T. Scales, it appears that on or about July 11, 1964, a car was rented from the Hertz Corporation in Memphis. The rental agreement shows at the top: "UFT MISS PROJECT, D. FLYNN, 300 Park Avenue South, New York 10, New York." There is a credit car number also which is shown as 1870 720 0005 8 NA.

The rental agreement shows that it was signed by Deborah Flynn and that the car would be returned by 8-11-64.

The reverse side of the rental agreement provides among other things: "2. Under no circumstances shall vehicle be used, operated or driven (e) by any person except (1) customer or (2) if a qualified licensed driver and provided customer's permission be first obtained, (b) customer's employer, or (c) an employee and customer in the course of such employee's regular and usual employment by customer. The foregoing restrictions are cumulative, and each of them shall apply to every use, operation or driving of vehicle."

Paragraph No. 7 further provided: "Vehicle is covered by an automobile liability insurance policy, a copy of which is available for inspection at the main office of lessor upon request by customer. Said policy contains bodily injury or death liability limits of $100,000 for each person in each accident, $300,000 limits for all persons in each accident and property damage liability limits

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of $25,000 for each accident. Customer, being an assured under said policy, agrees to comply with and be bound by all the terms, conditions, limitations and restrictions thereof which are hereby incorporated by reference herein and made a part of this rental agreement as fully as is set forth at length, including those terms, conditions limitations, and restrictions of which no specific mention is made herein.....Said policy does not apply to (D) any liability of customer or the driver or of the employer of either....while being operated (1) by any person in violation of law as to age; (4) by any person other than (a) customer (b) customer's employer (c) a person regularly employed by customer in the course of his business..."

The insurance policy afforded by Hertz was with the Royal Indemnity Company, a New York corporation, with executive offices at 150 Williams Street, New York. I believe that the policy number was R4-80A-08049, although that may be the claim number. In that policy, under III, the following persons are insured: "The unqualified word "insured" includes the named insured (Hertz) and also includes (1) any person, firm, association, partnership or corporation to whom an automobile has been rented without a chauffeur by the named insured; (2) any employee of said renter; (3) any employer or said renter; (8) any employee of the named insured while acting within the scope of his employment...."

Under IV, the EXCLUSIONS section of the policy there is the following language: "This policy does not apply to: (C) any liability of....driver....while being operated (4) by any person other than (a) the renter who signed the rental agreement, (b) the employer of the renter, (c) a person regularly employed by such renter in the usual course of his business, (d) any partener or executive officer of the renter....."

It is my understanding that the car was brought into Mississippi by Deborah Flynn and while here was operated on several occasions by a man named Yancey. I do not know Yancey's connection except that it is my understanding that he was working for COFO in the Holly Springs area where Deborah Flynn was also working.

I understand further that on August 1, 1964, Deborah Flynn asked Yancey to drive two teachers, who had been working at the UFT project, to the Memphis airport and also to pick up two tires in Memphis for a COFO car in Mississippi.

I am informed that Mr. Scales wanted to drive this car to Memphis but that Deborah Flynn specifically denied him permission. Scales did accompany Yancey and the two teachers

to Memphis and in some way, on the return trip, he was behind the wheel when the accident occurred in Marshall County, Mississippi. Yancey was killed in the impact. I understand that liability is clear upon Scales in that he was traveling at a high speed and on the wrong side of the highway. The plaintiff was rather seriously injured and copies of the various medical reports are attached. Suit has been filed in Marshall County against Scales, the Hertz Corporation, COFO and Deborah Flynn. Service has been had upon CORE and other associated organizations in COFO.

The case isnworth, in my opinion, a substantil amount of money ranging from $25,000 to $50,000 on its merits.

The case is worth substantially more than that, however, because of the racial overtones which will be inflamatory to a Mississippi jury.

APPLICABLE LAW

With respect to agency, it is not required that the service is a business one or that the service be a renumerative service. 60 CJS 1086, Sec. 436.

One driving the owner's car, at this request, and for his purposes, is the owner's agent. 60 CJS 1086, Sec. 436, and cases cited in Connecticut, Louisiana, New Hampshire, Tennessee, Texas, Virginia, Alabama, and Wisconsin, thereunder.

Where the owner's agent is authorized to employ a substitute, owner is liable for the negligence of the substitute, and such authorization may be implied from necessities of the case or from an emergency. 60 CJS 1087, Sec. 436(b) and cases cited thereunder.

Even when the agent is without express or implied authority to permit another to operate the vehicle, if it is used on the owner's business, liability may be imposed on owner because injury was caused by an instrumentality used by the agent in prosecution of principal's business thereby making acts complained of, the act of the agent, without regard to whether or not it was done in the presence of the agent. Emison v. Wylan, 111 So. 216, 215 Ala. 504; Meagher v. Garvin, (Nev.), 391 Pac.2d 507.

Without regard to the agent's authority in permitting another to drive, principal may be liable for injury inflicted by such person when his agent is negligent as in permitting an incompetent person to drive or in failing to exercise proper supervision and control. 60 CJS 1088, Sec. 436(b) and cases cited thereunder from Georgia, New Jersey, Tennessee, Texas, Wisconsin, Mississippi, Louisiana,

and South Carolina. This is so even though agent has been ordered not to permit another to drive. Wisconsin Tel. Co. v. Matson, 41 NW2d 268, 256 Wis. 304; Another case cited at 114 F.2d 519, 311 U.S. 710, 85 L.Ed. 462, 60 CJS 1089 Sec. 436(b).

With respect to the liability of CORE, it is my understanding that COFO is in the legal position of a voluntary unincorporated association may be held liable for the tort of an individual member when, with respect to the act complained of, the association occupies the relation of principal. 7 CJS 42, Sec. 16 and cases cited thereunder.

The members of the association are responwible for tortous acts of the association, and for tortous acts of agent of the association if the acts were commited within the scope of the purposes for which the association was formed. 7 CJS 79 Sec. 32(c) and cases cited thereunder.

Where liability exists, the liability of the members of the association is several for the whole amount. 7 CJS 79 Sec. 33(c) and cases cited thereunder. However, a right of contribution exists as between the members of the association.

DISCUSSION

It appears that the primary purpose of the trip to Memphis was for UFT and everyone involved denies that UFT was a member of COFO. However, the work in relationship which probably existed between UFT and COFO was so close that the Mississippi court might very well stretch to find that UFT was a member of COFO. The Mississippi court might also stretch to find an additional agency in COFO by reason of the fact that tires were picked up in Memphis and were being returned to a COFO car in Holly Springs. In addition, it is conceivable that the court might find a joint adventure involving UFT and COFO. At the very least, I suspect that a factual situation will be produced involving COFO which will be resolved by a Mississippi jury. If that is so, the chances are very good indeed that COFO will be held in the case.

I have recited to you the pertinent portions of the insurance policy. If it can be said that COFO was the employer of the renter, UFT, then the insurance policy would cover COFO. However, in the answer to the law suit filed by COFO, it denies that Deborah Flynn was ever an agent, servant, or employee of COFO. This pleading would seem to take COFO out of that portion of the insurance protection.

The only place where I can see that the policy might stretch is that it will cover while the car is being operated by a person regularly employed by such renter in the usual course of his business. Thus, a case can be made for the fact that Yancey was such a person.

The entire legal and factual situation is so elusive and tenuous that everyone is in doubt as to the final liability of any of the defendants except Scales himself. In addition, the insurance coverage question is so hazy and doubtful that no one really wants to take a chance and try the case. For that reason, the plaintiff had offered to settle the case for $20,000. The insurance carrier had offered to come up with $10,000 and requested that this be matched by the members of COFO. I talked with the attorney for the insurance carrier who advises me that NAACP and SCLC had offered to come up with $2500 each. That will not settle the case. I advised them that CORE did not have any money, and was $250,000 in debt and saw no possibility of any money coming from that source. He believes that his postiion with respect to lack of insurance coverage is strong and I am inclined to agree with him. However, I think that there is now enough doubt in his mind that he is willing to come up with a little more money if CORE will come up with anything at all. I told him that if $1000 from CORE together with the $5000 from NAACP and SCLC would settle the case and if he would tell me that he would pay whatever else it took up to a maximum settlement of $20,000 over all, I would get in touch with CORE and the see if I could possibly raise the money.

He called the plaintiff's attorney but was unable to reach him so that I will not know until some time Thursday what can be done.

Very truly yours,

Paul Cooksey

Paul Cooksey for
Alvin J. Bronstein

[enclosed, Farese to Bronstein, 1965, August 7]

Lawyers Constitutional Defense Committee

Mississippi Field Office

603 North Farish Street, Jackson, Mississippi 39202

(601) 948-4191

ALVIN J. BRONSTEIN
Staff Counsel

August 7, 1965

Push to a copy to John Farese
PG 8/10/65

N. E. Pepper, Esq.
Royal-Globe Insurance Co.
2087 Union Avenue
Memphis, Tennessee, 38122

Re: R4-80A-08049 Hertz Insured, Isiah Richmond Claim D/A: 891-64

Dear Mr. Pepper:

I am advised by Mr. Carl Rachlin, General Counsel for CORE, that CORE will contribute $1,000 to the overall settlement of Mr. Richmond's case.

As I understand the situation at this time, SCLC is contributing $2500, NAACP is contributing $2500, your company is contributing $10,000 and CORE is contributing $1,000 for an overall settlement of $16,000 to which Mr. Farese has agreed.

Please secure the necessary releases and furnishing us with a copy of the release and a copy of the dismissal with prejudice filed in this case. Upon receipt of these documents we will send you CORE's check for $1,000 payable as you request. You may either pay our share from CORE directly to Mr. Farese and we will reimburse you for $1,000 or we can make the check directly payable to Farese and Richmond.

Very truly yours,

Paul Cooksey for
Alvin J. Bronstein

Give Farese the usual

like to issue 10,000 draft to you & you collect from our co Defendants 8/10/65

cc: Carl Rachlin
Len Rosenthal

August 11, 1965

Mr. Paul Cooksey
LCDC
603 N. Farish Street
Jackson, Mississippi

Alvin Bronstein, Esq.
LCDC
603 N. Farish Street
Jackson, Mississippi

Dear Paul and Al:

1) Richmond v. Scales

Thank you for your letter of August 7. I trust that the $1,000 assigned to CORE will be divided into 2 to 3 parts, the other 2 being COFO and/or SNCC. This was my understanding when we discussed the matter on the telephone, and was the way I explained it in getting authority to pay out money that CORE does not seem to yet have, but hopes to have.

2) Is there some way that I can get poor Rabbi Levine a response to the questions I have asked on numerous occasions? The poor man cannot become a citizen of the United States because we cannot furnish the information that I have previously requested, concerning his arrest as a Freedom Rider in July, 1961. What is the status of his case? Is it one that is in the middle of the appeal, or one that has finally been ruled upon in his favor by the Mississippi Supreme Court or the United States Supreme Court?

Since that time I have gotton another request from a Philip Posner of California, who was arrested July 29, 1961, as a Freedom Rider and who is now about to enter the Hebrew Union College of Clifton Avenue, Cincinnati.

Cont'd.....

3) Are CORE staff people in Mississippi giving the necessary cooperation in development of the state-wide school case? I think a victory is in sight in what I hope would be a fascinating case. We would also be doing the Governor and his Board of Education and the State Auditor a favor by bringing this case since it takes them off the hook politically, if we force them to do what they know has to be done, but cannot for political reasons.

Please convey my kindest feelings to your entire staff and tell them I look forward to seeing them very soon. You cannot know how much I regretted having to back to the dirt and tar of New York when I was enjoying working so much in the field, including the few days I spent in Florida with John Due and the others working with him and my conversation with Judge Simpson.

Sincerely,

CARL RACHLIN
General Counsel

CR/cs

cc: files: Richmond v. Scales, State-wide school desegregation, Thomas v. Mississippi

Lawyers Constitutional Defense Committee
Mississippi Field Office
603 North Farish Street, Jackson, Mississippi 39202
(601) 948-4191

ALVIN J. BRONSTEIN
Staff Counsel

August 16, 1965

AUG 1 8 1965

Carl Rachlin, Esq.
CORE
38 Park Row
New York, N. Y.

Re: Richmond v. Scales

Dear Carl:

I have your letter of August 11th. Paul Cooksey tells me that your advice to him was that CORE would pay the $1000.00 and he so advised the Hertz attorneys.

If you wish contribution, could you take this up with SNCC and/or COFO, i.e. Kunstler or Smith. Thanks.

Sincerely,

Alvin J. Bronstein

AJB:jb

LAWYERS CONSTITUTIONAL DEFENSE COMMITTEE OF ACLU, INC., 156 FIFTH AVENUE, NEW YORK, N. Y. 10010

August 19, 1965

Howard Moore, Esq.
859½ Hunter Street, N.W.
Atlanta, Georgia 30314

Benjamin Smith, Esq.
1006 Baronne Building
305 Baronne Street
New Orleans, Louisiana

Dear Howard and Ben:

Richmond v. Scales

As you perhaps know by now, ~~Smith v. Harrison~~, et.al has been settled, on what I believe to be very honorable terms. Through a misunderstanding, the following situation arose: $1,000 is to be paid in addition to the amounts contributed by Hertz, and some of the other defendants. I had assumed that this $1,000 was to be shared equally amongst CORE, SNCC, and COFO. As you both know very well CORE's financial circumstances are such that $1,000 is absolutely impossible to raise, particularly at this time. I had thought that the $1,000 was to be shared amongst us. Even that amount is extraordinarily hard for CORE to raise.

May I ask each of you to take up with your respective clients my request that this $1,000 be shared equally amongst CORE, SNCC, and COFO.

With kindest regards,

Sincerely yours,

CARL RACHLIN
General Counsel

CR/cs

cc: Alvin Bronstein, Esq.

AUG 2 3 196

Lawyers Constitutional Defense Committee

Mississippi Field Office
603 North Farish Street, Jackson, Mississippi 39202

(601) 948-4191

ALVIN J. BRONSTEIN
Staff Counsel

August 20, 1965

Carl Rachlin, Esq.
CORE
38 Park Row
New York, N. Y.

Dear Carl:

In connection with your letter of August 19 to Howard Moore and Benjamin Smith you inadvertently referred to the case being settled as Smith v. Harrison whereas, in fact, it should have been Richmond v. Scales. I am notifying them of the correction by a copy of this letter.

Sincerely,

Alvin J. Bronstein

AJB:jb

cc: Howard Moore, Esq.
cc: Benjamin Smith, Esq.

JOHN B. FARESE
ATTORNEY AND COUNSELOR AT LAW
ASHLAND, MISSISSIPPI 38603
October 29, 1965

HOME PHONE 224-6455
OFFICE PHONE 224-6211

Mr. Clarence B. Jones
Attorney at Law
165 Broadway
New York, New York 10006

In re: Richmond vs. Scales, Et Al
Circuit Court - Marshall County, Miss.

Dear Mr. Jones:

As you know, I have been trying to get together with you and one other defendant for the past couple of months.

The status of the case presently is that the Court has set it for trial on Monday, 8 November, 1965.

At the last term of Court, pursuant to my telephone conversations with you, I announced to the Court that a settlement was imminent and that if he would continue the case, we would have an order for him to sign in vacation. As you know, I talked to you on several occasions and you finally told me that insofar as your client was concerned that you had receivedfinal authority. That with the insurance carrier for Hertz agreeing to pay $10,000.00 and CORE through its counsel, Mr. Carl Rachlin, agreeing to pay $1,000.00 that your client, SCLC would pay $2,500.00 and that the final settlement lacked only the approval of the NAACP to pay its contribution of $2,500.00. The total settlement being in the amount of $16,000.00.

All of you are aware of the fact that Mr. Isiah Richmond, Jr., is a school teacher and that he was seriously and permanently injured. The settlement agreed upon was a minimum one, considering the disabling injuries sustained.

We feel that in all equity and good conscience that the settlement should be carried out prior to trial. However, the fact that the case is set for Monday, 8 November 1965 at 9:00 o'clock A.M. makes time of the essence in any settlement.

Accordingly, please be advised of the setting and if possible the case should be terminated and concluded prior to Monday, 8 November 1965.

A copy of this letter is being sent all counsel, so that all may be

properly advised of the status.

With kindest wishes, I remain

Very sincerely yours,

John B. Farese

John B. Farese

JBF:er

cc: Honorable Glenn Fant
Attorney at Law
Holly Springs, Mississippi

Honorable Carsie A. Hall
Honorable Jack H. Young
115½ North Farish Street
Jackson, Mississippi

Honorable Carl Rachlin
Attorney at Law
38 Park Row
New York, New York

Honorable L. H. Rosenthal
Attorney at Law
Suite 406
518 E. Capitol Street
Jackson, Mississippi

Honorable Sidney L. Hurdle
Attorney at Law
Holly Springs, Mississippi

Honorable Alvin J. Bronstein
Attorney at Law
603 N. Farish Street
Jackson, Mississippi

Honorable R. Jess Brown
Attorney at Law
125½ N. Farish Street
Jackson, Mississippi

Honorable James M. Nabrit, III
Attorney at Law
10 Columbus Circle
New York, New York 10019

LAWYERS CONSTITUTIONAL DEFENSE COMMITTEE
OF
THE AMERICAN CIVIL LIBERTIES UNION
SOUTHERN OFFICE
603 NORTH FARISH STREET, JACKSON, MISSISSIPPI 39202
(601) 948-4191
ALVIN J. BRONSTEIN, STAFF COUNSEL

November 2, 1965

NOV 4 1965

Carl Rachlin, Esq.
CORE
38 Park Row
New York, N. Y.

Re: Richmond v. Scales, et al

Dear Carl:

I assume you received a copy of Farese's letter to Clarence Jones of October 29. Please see if you can find out what the story is on this and let me know immediately. At this point I would be in no position to go to trial on Monday, November 8.

Sincerely,

Alvin J. Bronstein

AJB:jb

November 4, 1965

John B. Farese, Esq.
Ashland,
Mississippi 38603

Dear Mr. Farese

Re: Richmond v. Scales, et al

On November 1, 1965, both Mr. Young and Mr. Nabrit communicated with me by telephone to advise me of the contents of your letter which they received on that date. According to that letter, the above-captioned case has been set down for trial previously and is now scheduled to be tried on November 8, 1965; you have been in the process of attempting to reach settlement with the various defendants "for a period of months" for the sum of $16,000, and that of the $16,000 the insurance carrier for Hertz has agreed to pay $10,000, CORE has agreed to pay $1,000, the SCLC has agreed to pay $2,500 and the NAACP $2,500. Upon receiving this information from Mr. Young, I requested that he communicate with you and, apparently in response to his call, I have received on November 3 your letter attaching the copies of medical reports and bills incurred by the plaintiff.

Both of the aforementioned letters imply facts which are not accurate and I think it would be well to clarify the facts for all counsel. I am advised that this action was commenced sometime last spring and that the original complaint was amended to include the NAACP as a defendant. My information is that service of process has never been made on any representative of the NAACP. Because of this situation, this organization has not been advised of any prior trial dates, nor generally to the status of the case. Moreover, and most importantly, until November 1, 1965, neither Mr. Young nor myself had received any communication from you

either by letter or telephone regarding settlement of this action. Had there been some communication or service on the NAACP as a defendant, we would have been informed of the status of the case and would have requested medical reports and other information sufficient to facilitate evaluation of the case so that settlement might be discussed.

After failing to communicate with counsel for the NAACP, you now request us on one week's notice to consider settlement for a figure which you describe as "agreed upon." Considering the fact that if settlement is recommended, it must be submitted to the Executive Secretary and the Board of Directors of this organization, what you ask borders on the impossible. This is so apart from the lack of service of process and the consequent absence of an Answer on behalf of the NAACP.

I am considering this matter at the present time and will determine how the matter can be handled within the time allowed. It is neither my intention to delay disposition of this case nor to rely on technicalities, but I do believe that some effort should have been made prior hereto to straighten out the matter procedurally and certainly to request counsel to consider settlement.

Very truly yours,

Barbara A. Morris

BAM:mes

To All Counsel

cc: Mr. Clarence Jones
Mr. James Nabrit
Mr. L. H. Rosenthal
Mr. Glen Faut
Mr. Sydney Hurdle
Mr. Al Bronstein
Mr. B. Jess Brown
Mr. Jack Young
Mr. Carl Bachlin ✓

November 5, 1965

Howard Moore, Esq.
859½ Hunter Street, N.W.
Atlanta, Georgia

Benjamin Smith, Esq.
1006 Baronne Building
305 Barrone Street
New Orleans, Louisiana

Dear Howard and Ben:

On August 19 I wrote to you about the settlement in Richmond v. Scales. Nothing in the CORE financial position has at all changed for the better and I once again ask you to try to obtain contribution so that SNCC, COFO and CORE will pay a total of $1,000 for the settlement of this case.

May I hear from you promptly.

Sincerely,

CARL RACHLIN
General Counsel

CR/cs

cc: Alvin Bronstein, Esq.

November 5, 1965

Alvin Bronstein, Esq.
LCDC
603 N. Farish Street
Jackson, Mississippi

Dear Al:

I just received your letter of the 2nd. I immediately called Barbara Morris at the NAACP. She advised me that Jack Young had called her when he received the letter from Farese, dated the 29th, that she had not heard about the case for a long time prior to that and that Farese to the best of her knowledge, had not been in touch with her office. She is checking right away and perhaps by the time you have received this letter she will have spoken to you as she promised me she would call you.

Of course, CORE will keep its promise but I beg of you that we be given time to stretch out the payments. I am still trying to get the joint contribution from SNCC and COFO though neither Howard or Ben Smith replied to my last letter, on this point.

With best regards,

Sincerely,

CARL RACHLIN
General Counsel

CR/cs

JOHN B. FARESE
ATTORNEY AND COUNSELOR AT LAW
ASHLAND, MISSISSIPPI 38603

HOME PHONE 224-6455
OFFICE PHONE 224-6211

December 8, 1965

Mr. Alvin J. Bronstein
Attorney at Law
603 North Farish Street
Jackson, Mississippi 39202

In re: Richmond vs. Scales, et al

Dear Mr. Bronstein:

On August 7, 1965, Mr. Paul Cooksey wrote a letter to Royal Globe Insurance Company advising them that CORE would contribute $1,000.00 to the overall settlement of the above case.

Accordingly, this is to advise you that all parties have agreed to the overall settlement of $16,000.00.

Enclosed herein you will please find a certified copy of the Order of Dismissal together with an executed Release.

It will be appreciated if you will send CORE's check in the amount of $1,000.00 payable to Isiah Richmond, Jr. and to the undersigned as his attorney.

With kind thanks for your prompt consideration, I remain

Very sincerely yours,

John B. Farese
JOHN B. FARESE

JBF:gm

Enclosures

P.S. I am also enclosing a copy of the letter your office wrote to refresh your recollection, together with an extra copy of the Release for whatever useful purpose it may serve.

JBF

LAWYERS CONSTITUTIONAL DEFENSE COMMITTEE
OF
THE AMERICAN CIVIL LIBERTIES UNION
SOUTHERN OFFICE
603 NORTH FARISH STREET, JACKSON, MISSISSIPPI 39202
(601) 948-4191
ALVIN J. BRONSTEIN, STAFF COUNSEL

DEC 13 1965

December 9, 1965

Carl Rachlin, Esq.
CORE
38 Park Row
New York, N. Y.

Re: Richmond v. Scales, et al

Dear Carl:

In Al's absence I am forwarding to you the attached letter from John B. Farese and enclosures in the above matter. Will you please take care of it?

Sincerely,

Julie

Julie N. Barrows

DEC 2 7 1965

December 20, 1965

Howard Moore, Esq.
859½ Hunter Street, N.W.
Atlanta, Georgia

Benjamin Smith, Esq.
1006 Baronne Building
305 Baronne Street
New Orleans, Louisiana

RE: Richmond v. Scales

Dear Howard & Ben:

I am being pressed hard for the $1,000 in the above case. My fingernails are giving out. I can't hang on the cliff much longer. Down I go to the abyss. Help! Help!

Cordially,

Carl

CARL RACHLIN
General Counsel

CR/cs

cc: Alvin Bronstein, Esq.

Dear Carl -

What in Gods name is this case about? my files show nothing about it at all. Enclosed please find paperclip - we use these around here when our fingernails get tired.

Ben -

ASHLAND, MISSISSIPPI 38603

December 27, 1965

HOME PHONE 224-6455
OFFICE PHONE 224-6211

Honorable Alvin J. Bronstein
Staff Counsel
Lawyers Constitutional Defense Committee
603 North Farish Street
Jackson, Mississippi 39202

In re: R4-80A-08049
Richmond vs. Scales, Et Al.

Dear Mr. Bronstein:

On December 8, 1965, I sent you the Order Dismissing the cause together with a release executed by Isiah Richmond. I have failed to receive your check in the amount of $1000.00 as agreed upon. We only lack your check to close this matter.

With kindest thanks for your prompt consideration, I remain

Very sincerely yours,

John B. Farese

John B. Farese

JBF:er

LAW OFFICES
HOLLOWELL, WARD, MOORE & ALEXANDER
859½ HUNTER STREET, N. W.
ATLANTA, GEORGIA 30314

PHONE: 525-8372
AREA CODE 404

DONALD L. HOLLOWELL
HORACE T. WARD
HOWARD MOORE, JR.
WILLIAM H. ALEXANDER

December 28, 1965

DEC 30 1965

Carl Rachlin, Esquire
CORE, Legal Department
38 Park Row
New York, New York

Re: Richmond v. Scales

Dear Carl:

We are without paperclips.

What is this case about? How is SNCC involved in this? Are you asking SNCC to contribute an entire $1, 000, or just a fraction of this sum?

Please enlighten me. Should you plunge to the depths, we ought to have enough light to find you.

Yours in the struggle,

Howard

Howard Moore, Jr.

hmjr/jbm

cc: Benjamin Smith, Esq.

LAWYERS CONSTITUTIONAL DEFENSE COMMITTEE
OF
THE AMERICAN CIVIL LIBERTIES UNION
SOUTHERN OFFICE
603 NORTH FARISH STREET, JACKSON, MISSISSIPPI 39202
(601) 948-4191
ALVIN J. BRONSTEIN, STAFF COUNSEL

December 31, 1965

Carl Rachlin, Esquire
CORE
38 Park Row
New York, N. Y.

Dear Carl:

Re: Richmond v. Scales, etal

Further to our letter of December 9. I am enclosing a copy of a letter dated December 27 from John Farese, attorney for the plaintiff in the captioned matter. Will you please give this your immediate attention?

Best wishes for the New Year.

Sincerely,

Al

Al Bronstein

Enclosure

cc: John Farese

Rudolph

JOHN B. FARESE
ATTORNEY AND COUNSELOR AT LAW
ASHLAND, MISSISSIPPI 38603

HOME PHONE 224-6455
OFFICE PHONE 224-6211

January 12, 1966

RECEIVED
JAN 13 1966

Honorable Alvin J. Bronstein
Staff Counsel
Lawyers Constitutional Defense Committee
603 North Farish Street
Jackson, Mississippi 39202

In re: R4-80A-08049
Richmond v. Scales, Et Al.

Dear Mr. Bronstein:

I wish you would get on this matter and see that your client pays us the $1000.00 agreed upon. This is holding up the final distribution of funds to our client. Mr. Richmond has been very distressed and has called almost daily.

With hopes that you will give this your prompt attention, and with best wishes, I remain

Very sincerely yours,

John B. Farese

John B. Farese

JBF:er

cc: Mr. Isiah Richmond, Jr.

Carl
what is happening on this. Can't it be cleared up?
RFK

[1965]

January 18, 1965

Howard Moore, Jr., Esq.
859½ Hunter Street, N. W.
Atlanta, Georgia 30314

Benjamin Smith, Esq.
1006 Baronne Building
305 Baronne Street
New Orleans, Louisiana

Dear Howard & Ben:

I must confess that I was somewhat taken aback when neither of you expressed any knowledge concerning Richmond v. Scales, since it involved COFO and/or SNCC and not CORE at all, but as I understand it all of us, along with NAACP and SCLC are defendants.

Bronstein worked out a very good settlement, a major part of which was to be paid by Hertz, the owner of the rented car. Minor part, namely $2,500 each were to be paid by SCLC and NAACP. $1,000 remains to be paid. I undertook, in order to effectuate a settlement in a very bad situation where quite clearly the driver of the car was pretty obviously in the wrong, to pay $1,000 in the belief that while all three of us are in bad shape financially, we could scramble together $1,000 to this contribution. There was a road car accident in the vicinity of Holly Springs. The occupant of the other car, I understand was a Negro schoolteacher from Memphis who was very badly hurt. He retained as his attorney John B. Farese.

There is no doubt in my mind that Bronstein did the correct thing in working out the details in this settlement and I would be most appreciative if COFO and SNCC could join CORE in contributing $1,000 to dispose of this matter since Bronstein has been plagued by the attorney for the plaintiff.

Sincerely,

CARL RACHLIN
General Counsel

CR/cs

JOHN B. FARESE
ATTORNEY AND COUNSELOR AT LAW
ASHLAND, MISSISSIPPI 38603

HOME PHONE 224-6455
OFFICE PHONE 224-6211

February 7, 1966

FEB 9 1966

Honorable Carl Rachiin
CORE
38 Park Row
New York, N. Y.

In re: Richmond vs. Sacles, et al

Dear Mr. Rachiin,

On 31 December 1965 Mr. Al Bronstein of Jackson, Mississippi sent you my letter relative to the settlement in this case. As you know, you organization agreed to pay $1,000.00 in the settlement of this case. I have sent you a release properly executed together with a certified copy of the order dismissing the case and feel that your check should be sent in accordance with your promise.

Since my client has made repeated requests, I earnestly hope you will take care of this immediately.

With kind thanks for your prompt consideration, I remain

Very sincerely yours,

John B. Farese
gm

JOHN B. FARESE

JBF:gm

cc: Mr. Alvin J. Bronstein
Staff Counsel
Lawyers Constitutional Defense Committee
603 North Farish Street
Jackson, Mississippi

Mr. Jack L. Halliburton
Attorney at Law
81 Madison Building
Memphis, Tennessee

Isiah Richmond, Jr.
1873 Kendale
Memphis, Tennessee

JOHN B. FARESE
ATTORNEY AND COUNSELOR AT LAW
ASHLAND, MISSISSIPPI 38603

HOME PHONE 224-6455
OFFICE PHONE 224-6211

March 3, 1966

MAR 7 1966

Honorable Carl Rachlin
Attorney at Law
38 Park Row
New York, New York

In re: Richmond vs. Scales, et al

Dear Mr. Rachlin:

As you know, the above styled case was settled and releases and the Order of Dismissal were sent you. Mr. Bronstein sent me a copy of his letter to you on 31 December 1965 but I have failed to hear from you since that time.

It will be appreciated if you will send your check in the amount of $1,000.00 covering your pro-rata share of the agreed out of Court settlement. My client is very distrubed about the delay in receiving your check.

With kind thanks for your prompt consideration, I remain

Very sincerely yours,

John B. Farese

JOHN B. FARESE

JBF:gm

cc: Honorable Alvin J. Bronstein
Attorney at Law
603 North Farish Street
Jackson, Mississippi 39202

SMITH, WALTZER, JONES & PEEBLES
ATTORNEYS AND COUNSELORS AT LAW
Suite 1005 Baronne Bldg.
305 Baronne Street
525-4361
NEW ORLEANS, LA. 70112

BENJAMIN E. SMITH
BRUCE C. WALTZER
ALVIN B. JONES
JACK PEEBLES

ARTHEL J. SCHEUERMANN

Cable Address: PEPEN
Notary Public

March 18, 1966

MAR 21 1966

Mr. Carl Rachlin
Attorney at Law
38 Park Row
New York 38, New York

Re: Richmond v. Scales

Dear Carl:

I was in Mississippi a couple of weeks ago and spoke about this case to Bronstein. His description of it reminded me of the case and I now remember what you have been talking about.

I certainly agree with you that Bronstein's settlement was a proper one under the circumstances, and I have no hesitation in saying so. The only problem we have is getting up the money to contribute to the $1000 which is necessary to complete the division of the responsibility. I have made inquiries as to whether or not any COFO funds are still available, and if I locate any, I will attempt to levy on them so as to make our contribution. As you know, finding COFO's structure in Mississippi at this point is extremely difficult, much less funds on deposit.

Therefore, I am sending a copy of this letter to Dr. Aaron Henry in Clarksdale and asking him to let me know if there is anything available to carry our share of the burden in this particular matter.

In the meantime, I remain with best wishes,

Sincerely,

Ben

Benjamin E. Smith

BES/mh
cc: Howard Moore, Esq.

mh

P.S. Congratulations on your victory in Taylor v. Louisiana. It was a significant decision, I am only sorry to see that Justice Black seems to misunderstand the situation.

March 21, 1966

Honorable John B. Farese
Attorney and Counselor at Law
Ashland, Mississippi

Re: Richmond v. Scales, et al

Dear Mr. Farese:

We are aware of our undertakings. I am trying to raise the money to take care of this matter. I will keep in touch with you.

Thank you for your courtesy.

Sincerely,

CR:tp

Carl Rachlin
General Counsel

March 28, 1966

Benjamin E. Smith, Esq.
Smith, Waltzer, Jones & Peebles
305 Baronne Street
New Orleans, Louisiana

Dear Ben:

Thank you for your letter of the 18th concerning RICHMOND v. Scales. I appreciate the efforts that you will make to contribute to this settlement. For in all candor, CORE's finances at the moment are desperate. In fact, I do not know where our share of the $1,000.00 will come from unless there is a marked upswing in intake. I hope Howard can help.

I have not seen you in a long time and I trust the occasion will occur when we will get together over a beer. Please give my regards to Bruce.

Sincerly yours,

Carl Rachlin
General Counsel

CR:tp
cc: Howard Moore
Al Bronstein

JOHN B. FARESE
ATTORNEY AND COUNSELOR AT LAW
ASHLAND, MISSISSIPPI 38603

March 30, 1966

HOME PHONE 224-6455
OFFICE PHONE 224-6211

APR 4 1966

Honorable Carl Rachlin
Attorney at Law
38 Park Row
New York, New York

In re: Richmond v. Scales, Et Al.

Dear Mr. Rachlin:

Please let us have your check so that we can wind-up this matter. My client has been calling daily, and we are embarrassed about the delay.

With kindest thanks for your prompt consideration, I remain

Very sincerely yours,

John B. Farese

John B. Farese

JBF:er

cc: Honorable Alvin J. Bronstein
Mr. Isiah Richmond, Jr.

JOHN B. FARESE
ATTORNEY AND COUNSELOR AT LAW
ASHLAND, MISSISSIPPI 38603

MAY 11 1966

May 9, 1966

HOME PHONE 224-6455
OFFICE PHONE 224-6211

Honorable Carl Rachlin
Attorney at Law
38 Park Row
New York, New York

In re: Richmond vs. Scales, et al

Dear Mr. Rachlin:

My client has called me regarding the $1,000.00 which has not been paid. We are most anxious to terminate this case which has been pending for an extremely long time.

Therefore, it is respectfully requested that you send us the agreed amount so that we may finally wind-up this prolonged matter.

With kindest thanks for your prompt consideration, I remain

Very sincerely yours,

John B Farese
JOHN B. FARESE

JBF:gm

cc: Mr. Jack L. Halliburton
Mr. Isiah Richmond, Jr.

July 1, 1966

John B. Farese Esq.
Ashland
Mississippi 38603

Re: Richmond v. Scales

Dear Mr. Farese:

I am most embarrassed to tell you that we are still not able to pay the money arranged by way of a settlement. Our financial condition, as unfortunately known throughout the country is such that there are many, many outstanding bills. I dread to tell you how much. Please keep in mind that we have not forgotten you and do not intend to forget you and I hope that we can clear this up in the not too distant future.

Sincerely yours,

Carl Rachlin
General Counsel

CR/vh
cc: Alvin Bronstein

JOHN B. FARESE
ATTORNEY AND COUNSELOR AT LAW
ASHLAND, MISSISSIPPI 38603

January 5, 1967

HOME PHONE 224-6455
OFFICE PHONE 224-6211

Honorable Carl Rachlin
Attorney at Law
38 Park Row
New York, New York

In re: Richmond vs. Scales, Et Al.

Dear Mr. Rachlin:

On July 1, 1966, you wrote me a letter advising me that you would pay the agreed settlement on the Richmond case in the near future. This matter has been pending over a year and I cannot understand why you have not honored your commitment.

I saw Mr. Alvin Bronstein in the Supreme Court at Jackson, Mississippi, about two months ago and he promised me he would contact you about this matter.

This case was settled with the definite understanding that your clients would pay $1000 which was their agreed share. This was confirmed by your local Attorney, Mr. Bronstein. My client has been pressing me to do something about collecting this amount.

I trust that you will send us your check in the amount of $1000 so that I can wind up this case.

A copy of this letter is being sent Mr. Bronstein so that he will remember our conversation.

With kindest thanks for your prompt consideration, I remain

Very sincerely yours,

John B. Farese

John B. Farese

JBF;er

cc: Mr. Alvin Bronstein, Attorney at Law, 603 North Farish Street, Jackson, Mississippi 39202
Mr. Isiah Richmond, Jr., 1873 Kendale, Memphis, Tennessee

①

Partners v. Spouse

I Profit

A joint adventure is a joint association of two or more to carry out a single business enterprise for profit. Borwell v. Champagne, 229 Miss. 355, 91 So. 2d 256 (1956). Furthermore there must be an arrangement for sharing these profits. Quinn v. Porter (1952) So 2d 797, 800. In the latter case the facts were as follows: Defendant Quinn was the owner of a fish processing plant. Plaintiff Porter was a seaman on a fishing boat supplying the plant. Walker owned the boat, and employed Hawey, the captain, who in turn hired the crew. Quinn and Walker had an agreement whereby Quinn was to receive 60% of the sale price of the fish, and Walker 40%. Quinn handled all financial records and paid all bills for the expenses of the boat during the season, but deducted all the expenses from Walker's acct. at the end of the year. Walker paid social security, etc. Plaintiff was injured through the negligence of the captain. He sued Quinn as his employer under the Jones Act, and won below. The Miss. Supreme Ct. reversed and entered judgment for Quinn, holding that this was not a joint adventure. ~~There was no agreement to share profits, as either party~~ The agreement to share net receipts was not an agreement to share profits. Either party might make a profit while the other made a loss, depending on their individual

Miss Ct.

expenses. In the ~~present case~~ matter before us no profits were sought, let alone an agreement to share them or even gross receipts.

There is a doctrine generally termed joint enterprise in which profits are not essential. The leading case is Carboneau v. Peterson, 1 Wash 2d 347, 95 P 2d 1043. This doctrine is ~~used~~ virtually totally limited to imputing the negligence of the driver of a vehicle to a fellow passenger, and then almost always to impute contributory negligence. The doctrine, according to Prosser and Harper and James, is a dying one and disfavored by the courts. It does not appear to have been either ~~accepted~~ or expressly rejected in Mississippi, but the fellow passenger doctrine is followed in neighboring states. Woodson v. Hare (Ala 1943) 13 So 2d 172

what kind of enterprise are we concerned with?

In any event, Prosser cites but a few exceptions to the limitation of the doctrine to fellow passenger cases, ~~and these even these cases do not appear to be exceptions~~ These exceptions are either cases where contributory negligence is imputed to other active participants in the activity causing injury or not exceptions at all. The 2 examples of the former are Cullinan v. Tetrault (1923) 122 A. 770, 123 Me. 302 (contributory negligence of purchaser of poison imputed to deceased drinking companion) and Ruth v. Hutchinson Co. (Minn. 1941) 296 N.W. 136 (~~contributory~~

(n)

negligence of 1 user of gas stove imputed to deceased members of hunting party). Examples of the latter are Eagle Star Ins. Co. v. Bean, (9th Circ. 1943) 134 F2d 755, and Shell Oil v. Prestidge (9th Cir. 1957) (Idaho law) 249 F2d 413. Both cases cite Carboneau v. Peterson (supra). But the latter case also implies that an agreement to share profits is necessary, and both cases involved commercial ventures with agreements to share profits. Another supposed exception (Prosser) is O'Neil v. Sea Bee Club (1954) 118 N.E. 2d 175, 69 O.L.A. 442. All that case holds however is that a member of an unincorporated voluntary association may not sue the association for negligence, as he would thereby be suing himself.

(Wash. law)

~~Mississippi does not seem to follow the joint enterprise doctrine. If it does apply it in this case it will be greatly extending a doctrine which~~

~~There have also been a few decisions outside of Miss. which have held that profit was not essential to a joint venture, but when there~~

In Fries v. U.S. (6th Cir. 1948) 170 F2d 726 (Ky. law) it was said that profit is not material

(4)

case facts / Yes

law clerk

This case specifically supports my argument

who was in charge?

The Fed and state governements contributed money and advice to a county program for the eradication of VD. But the holding was that the Fed. Gov. was not liable for the negligence of a driver working on the project, as it had no right of control over him. The cases cited in support of the unimportance of profits are all fellow passenger cases. State ex rel McGory v. Bland (Mo. 1946) 197 S.W. 2d 669, similarly cites no authority other than fellow passenger cases for its dictum that profits are not essential, and holds that it was not a joint adventure because defendant lacked control.

Thus, on the issue of profits, Miss. will have to substantially broaden a doctrine which is disfavored by the writers and by the courts (Prosser) in that 1.) CORE was not a passenger 2. Not contributory negligence but negligence is involved. (There are precedents for the latter point, outside of Miss., but it is probably a minority view.) Lucey v. John Hope Engineering (R.I.) 120 A. 62 Woodson v. Hare (Ala. 1943) 13 So. 2d. 172

Explain this a little more

II Control

Should the court extend the doctrine of joint enterprise to cover the present case, the next defense is lack of control. Mutual right of control is essential to either joint adventures or joint

(5) - (★) James v. Atlantic + E.C. Ry. Co. (N.C. 1951) 65 S.E.2d 214
(1) Gulf Refining Co. v. Stone. ([redacted] Miss 1945) 21 So 2d 19, 23
(jt. adventure)
[redacted] Carboneau v. Peterson (Supra) - (jt. enterprise)

enterprises, in all jurisdictions, including Miss.(1) The few exceptions, all outside Miss., were [redacted] and later overruled (Harper + James). ~~The tendency is to seems to be~~ The judicial tendency seems to be to find lack of control, even in fellow passenger cases, unless the passenger is the owner, or there are other circumstances clearly showing in fact a mutual right of control. Actual control is not necessary, however, and one may surrender control in fact to the driver and yet be liable to 3rd parties. (★)

aberations

It is hard to see how, on the facts of our case, plaintiff can establish a right of control [redacted] over the vehicle in [redacted] CORE. CORE was unaware of the existence of the automobile. CORE was not involved in any capacity in the project in Halley Springs. We shall want to establish clearly exactly what are the joint purposes of CORE and COFO, and establish that even if CORE and COFO do constitute a joint enterprise for some purposes, that the Halley Springs project is not within the scope of the agreement. In the cases where recovery was allowed, on a joint adventure theory, the facts are always that the ~~always stand, supports~~ defendant has a right of control not only over the venture in general but over the instrumentality in particular, e.g. Peoples v. Seamon (Ala 1947) [redacted] 31 So 2d 88, ~~[redacted]~~ (defendant owned taxi

involved in collision, Beck v. Stimmel (ct. of App. Ohio Franklin Cty 1931) 177 N.E. 920, (plaintiff fell down elevator shaft in defendant's place of business)

III Proprietary interest -

Aside from the lack of profit seeking and sharing this fails to meet the requirements of joint adventures in that there is no joint propietary interest in the subject matter. Sample v. Romine (1942), 193 Miss 706, 8 So. 2d 257, 9 So 2d 643, 10 So 2d 346.

~~III Proprietary interest - Aside from the lack of profit seeking and sharing this is not a joint adventure because no joint propietary interest in the subject matter is required Sample v. Romine [etc]~~

~~IV Other requirements~~

~~The arrangement between CORE and CORG satisfies most other requirements of either joint adventure or joint enterprise. These are 1. a contract, express or implied, 2. mutual purpose, 3. community of interest.~~

IV Other requirements

The arrangement between CORE and CORG satisfies most other requirements of either joint adventure or joint enterprise. These are 1. a contract, express or implied 2. mutual purpose 3. community of interest.

Charles et al vs City of Quincy, Florida

Library of Wisconsin

Please Retain Original Order

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF FLORIDA

TALLAHASSEE DIVISION

CHARLES ROBINSON, a minor, by Mattie Mae Robinson, his mother and next friend,

and

CHARLES HALL, a minor, by Dora Mae Bradwell, his mother and next friend

Individually and as representatives of a class

Plaintiffs

VS.

CITY OF QUINCY, FLORIDA, A municipal corporation
R. D. EDWARDS, Individually and as an agent of said municipal corporation;
LEON WEAVER, in his capacity as Mayor of Quincy, Florida;

and

PAUL GREGORY, individually and as City Judge and Judge of the City Court of the City of Quincy, Florida

C. W. HAIRE individually and as Chief of Police of Quincy, Florida

OTHO EDWARDS Sheriff of Gadsden County

Defendants

CIVIL CAUSE

No. _____

COMPLAINT

COUNT I

For his first cause of action, plaintiff, Charles Robinson, complains of the defendants and alleges and says that:

1. Jurisdiction of this Court is invoked under the Fourteenth Amendment to the Constitution of the United States, and Title 28 U. S. C. §§ 1331 and 1343, and Title 42 U. S. C. §§ 1983 and 1988.

2. The matter in controversy exceeds the sum of Ten Thousand Dollars, exclusive of interest and costs.

3. During all times mentioned herein, the plaintiffs, and each of them were, and still are , citizens of the United States, residing in the City of Quincy, State of Florida; and are members of the Negro race; and were and still are over the age of fourteen but under the age of twenty-one years. and (see Para 31 copy)

4. During all times mentioned herein, the defendant R. D. EDWARDS was a duly appointed, qualified and acting police officer of the Police Department of the City of Quincy, Florida, a municipal corporation, and all acts described below were ~~acting~~ in the course and scope of his employment ~~as such~~, and acting and were under the color of the law of Florida or ~~of~~ the City of Quincy or other subdivision of the state of Florida pursuant to orders and directives from C. W. HAIRE.

5. During all times mentioned herein, the defendant, C. W. HARE was the duly appointed, qualified and acting Chief of Police of the City of Quincy, Florida, and had general supervision over all its police officers including the defendant, R. D. EDWARDS, and at all times herein ~~and~~ he acted under the color of the law of the state of Florida or any of its subdivisions including Quincy

6. During all times mentioned herein, the defendant, LEON WEAVER was the Mayor and chief executive officer of the City of Quincy, Florida, and had the power to shape and direct the policies and practices of its Police Department. and similarly acted under the color of the laws of Florida or any of its subdivisions including Quincy ~~and in all respects~~

7. During all times mentioned herein, the defendant PAUL GREGORY was the duly appointed, qualified and acting City Judge and Judge of the Municipal Court (also known as "City Court") of the City of Quincy, State of Florida, and likewise acted under the ~~law~~ color of law.

8. During all times mentioned herein, the defendant OTHO EDWARDS was the duly elected Sheriff of Gadsden County, and as such duly elected sheriff of Gadsden County, has control and supervision over the County Jail, located in the City of Quincy; and at all times mentioned herein, was acting in the course and scope of his duty. and under the color of law etc.

9. At all times mentioned herein, the said defendants, and each of them, were acting ~~under the color of their respective offices~~ within the scope of their duties and responsibilities as described above, and ~~were acting~~ under color of the statutes, ordinances, regulations, customs and usages of the State of Florida, the County of Gadsden, and the City of Quincy.

10. The City of Quincy, Florida, a municipal corporation, was at all times mentioned herein the employer of the said defendants, R. D. EDWARDS, LEON WEAVER, PAUL GREGORY, AND C. W. HARE and each of them. Said City at all times provided the defendants R. E. EDWARDS and C. W. HARE with official badges and identification cards describing the bearer as its police officer and Chief of Police, respectively. The R. D. EDWARDS, LEON WEAVER, PAUL, GREGORY, AND C. W. HAIRE were acting, at all times, mentioned here, in the course and scope of their employment by said municipal corporation, and they were acting in the name of said municipal corporation, as its agents and servants, at the time they performed all the acts and omissions herein complained of.

11. On or about July 5, 1964, at about 9:45 P.M., the plaintiffs, ~~acting independently of each other and~~ each without knowledge of the other's actions, arrived at Chandler's Hamburger Shop in separate automobiles. Chandler's ~~Hamburger Shop~~ is located on East Jefferson Street in the City of Quincy, Florida. It is a "place of public accommodation" as defined in the Civil Rights Act of 1964, the operations of which affect commerce within the meaning of that Act, and at which segregation and discrimination were, at the times mentioned herein, supported and required by State Action.

12. The plaintiff, HALL, desiring to purchase food at Chandler's ~~Hamburger Shop~~, approached the service window which ~~had~~, prior to the enactment of the Civil Rights Act of 1964, been ~~known and~~ designated ~~and enforced~~ as the "Whites Only" window, and entered a waiting line.

13. The defendant, R. D. EDWARDS, ordered the persons in line to leave; ~~and the~~ plaintiff HALL ~~did leave~~, although said order was ~~given without any authority from the manager of Chandler's Hamburger Shop and~~ without any authority ~~of~~ law.

14. As the plaintiff HALL was ~~in the process of~~ leaving the premises of Chandler's ~~Hamburger Shop~~, the defendant R. D. EDWARDS approached him, said, in substance, "Boy, didn't I tell you to leave"; and forthwith caused said plaintiff to be arrested by another police officer.

15. ~~At~~ About the ~~same~~ time as the events last-related, ~~the~~ Plaintiff Robinson, not knowing what had occurred, began to approach the "~~White Only~~" serving window; and while in the process of approaching it, ~~and immediately after the plaintiff HALL was arrested,~~ the defendant R. D. EDWARDS turned to plaintiff ROBINSON, and forthwith caused him to be arrested, without any cause or justification or authority whatsoever.

16. Neither the defendant R. D. EDWARDS, nor any other police officer or any other person, then had a warrant of any kind authorizing the arrest of either plaintiff, nor had any such warrant been issued by any officer; and neither plaintiff had committed any offense or breach of the peace whatsoever, at the time of or immediately prior to said arrests.

17. Forthwith upon being arrested, the plaintiffs were placed in an official Police Car, which was the property of the defendant City of Quincy; and after a period time, they were driven to the police station of the City of Quincy.

18. Before being driven to the police station, the plaintiffs observed that all other Negro persons in the vicinity had left the Hamburger Shop; and that white persons were being served there.

19. Upon arriving at the police station, the plaintiffs asked the desk officer and other police officers what they were charged with; said question was not answered. They were searched, and their personal effects were taken from them. Plaintiff ROBINSON asked permission to telephone his mother, but said request was denied, and neither plaintiff was permitted to make a telephone call.

20. After a period of time, the mother of plaintiff ROBINSON and the step-father of plaintiff HALL arrived at the police station, and sought

the release of said plaintiffs from custody. Said request was refused ~~unless~~ and the sum of $100.00 ~~was~~ required illegally of the posted for each plaintiff; ~~and~~ such sum being unavailable, ~~they~~ plaintiffs were thereupon booked, driven to the Gadsden County jail, and illegally incarcerated and detained therein. Said jail was under the general control and supervision of the defendant SHERIFF OTHO EDWARDS.

21. The plaintiffs were held illegally in said jail until about 3:00 P.M. on July 6, 1964. During all of said period, of arrest and ~~imprisonment~~ incarceration, a total of about 17 hours, plaintiffs were never brought before a judge, court or magistrate; were not informed of the specific charge or charges upon which they were being held; were not informed of their privilege against self-incrimination, nor of their right to the advice of legal counsel, all in violation of their rights under the U.S. Const.

22. ~~At~~ About 3:00 P. M., July 6, 1964, both plaintiffs were illegally brought before the defendant City Judge, who read them a statement and asked them how they would plead. Neither plaintiff had nor has the training or experience to fully comprehend said statement; ~~they were not advised~~ no advice as to their rights was given by said Judge, ~~of~~ their right to legal counsel of their choice before entering a plea and at all other stages of the proceeding, ~~nor of~~ their privilege against self-incrimination, ~~nor of~~ their other rights and privileges under the Constitution of the State of Florida and of the United States. Both plaintiffs entered ~~please~~ plea of not guilty.

23. The said defendant City Judge thereupon proceeded illegally to commence trial of the plaintiffs. Defendant R. D. EDWARDS and other police officers testified. The manager of Chandler's H~~amburger Sh~~op testified, in substance, that he never asked the plaintiffs or any other persons to leave his premises, nor had he ~~called~~ asked defendants to arrest plaintiffs. The defendant City Judge did not afford the plaintiffs ~~sufficient~~ opportunity to cross-examine witnesses who testified against them; ~~while the~~ interrupting while plaintiff Robinson ~~was~~ trying to ask a question of a witness, ~~the defendant City Judge~~ PAUL GREGORY ~~banged his gavel~~ and said defendant Judge entered an illegal ~~purported~~ finding of "Guilty" of the alleged offense of violating the Florida statutes pertaining to Undesirable Guests and Trespass; and assessed a illegal ~~purported~~ fine of $100.00 or thirty days as to each plaintiff.

24. Being unable to pay said purported fines, the plaintiffs were thereupon returned to the County Jail, and were again incarcerated by the defendant Sheriff. At all times while held in said jail, plaintiffs were held and kept in a segregated portion thereof reserved by custom, usage, and orders of the defendant Sheriff for prisoners of the Negro race only.

25. Thereafter, until their release as set out below, the plaintiffs were required, during daylight hours, to perform hard manual labor.

26. At about 12:50 P. M. on July 9, 1964, a person or persons unknown to plaintiffs paid the balance of their fines, and they were released from custody.

27. The aforesaid acts of the defendants constituted a violation of the Constitution and laws of the United States of America in that the plaintiffs, and each of them, were deprived by the defendants, and each of them of their right to be secure against unreasonable searches and seizures, and of their right not to be deprived of their lives, liberty nor property without due process of law and, the actions of defendants against plaintiffs having been taken because they were members of the Negro race, their right to equal protection of the laws, all in violation of the Fourteenth Amendment to the Constitution of the United States and Title 28 U. S. C. § 1343 (3) and Title 42 U. S. C. § 1983.

28. As a direct and proximate result of the aforesaid acts of the defendants, and each of them, the plaintiff Charles Robinson suffered great mental anguish, from then until now and he will continue to so suffer in the future; and he has been subjected and will in the future be subjected to humiliation, scorn and derision by reason of said acts; and he has lost and will in the future lose large sums of money by reason of having been so humiliated and held up to public scorn and derision, and being given a false, illegal and fraudulent criminal record, all as a result of the foregoing acts of defendants.

WHEREFORE, Plaintiff CHARLES ROBINSON demands judgement against the defendants, and each of them, jointly and severally

in the amount of One Hundred Thousand Dollars ($100,000), plus the costs of this action, and he further demand punitive damages against the defendants and each of them, jointly and severally, in the amount of Two hundred and fifty thousand dollars ($250,000), plus the costs of this action; and he further demands such other relief as to this Court seems just, proper and equitable.

COUNT II

29. Plaintiff CHARLES HALL, incorporates and realleges paragraphs 1 to and including paragraph 28. of Count I of this Complaint.

WHEREFORE, Plaintiff CHARLES HALL demands judgement against the defendants, and each of them, jointly and severally in the amount of One Hundred Thousand Dolars ($100,000), plus the costs of this action, and he further demands punitive damages against the defendants and each of them, jointly and severally, in the amount of Two Hundred and Fifty Thousand Dollars ($250,000), plus the costs of this action; and he further demands such other relief as to this Court seems just, proper, and equitable.

COUNT III

30. Jurisdiction of this Court is invoked pursuant to Title 28 U. S. C. Sections 1343 and 1343 (4). This is a suit in equity authorized by and instituted pursuant to Title II of the Act known as the "Civil Rights Act of 1964," Sections 201 (a)(2), 201 (d), 202, 203(a), (b) and (c), 204 (a), 204 (b) and 205(a), and Title 42 U. S. C., Section 1983. The jurisdiction of this Court is invoked to secure protection of civil rights and to redress deprivation of rights, privileges, and immunities secured by (a) the Fourteenth Amendment of the Constitution of the United States, Section 1; (b) the Commerce Clause, Article 1, Section 8, Clause 3, of the Constitution of the United States; (c) Title II of the Act known as "The Civil Rights Act of 1964," providing for injunctive relief against discrimination in places of public accommodation and (d) Title 42 U. S. C., Section 1981, providing for the equal rights of citizens and all persons within the jurisdiction of the United States.

~~No deprivat~~ due process of law and equal protection of the law

31. Plaintiffs bring this action on their own behalf and on behalf of others similarly situated pursuant to Rule 23 (a)(3) of the Federal Rules of Civil Procedure. There are common questions of law and fact affecting the rights of other Negro persons to use the goods, services, facilities, privileges, advantages and accommodations of The Chandler's ~~Hamburger Shop~~, a restaurant, without discrimination and/or segregation on the ground of race or color who are so numerous as to make it impracticable to bring them all before this Court. A common relief is sought. The interests of said class are adequately represented by plaintiffs.

32. This is a proceeding for an injunction restraining defendants from continuing or maintaining any policy, practice, custom, and usage of withholding, denying, attempting to withhold or deny, or depriving or attempting to deprive, or otherwise interfering, with the rights of plaintiffs and others similarly situated to admission to and full use and enjoyment of the goods, services, facilities, privileges, advantages, and accommodations of The Chandler's ~~Hamburger Shop~~ without discrimination and/or segregation on the ground of race or color.

33. Plaintiffs, CHARLES ROBINSON AND CHARLES HALL, are Negro citizens of the United States and the State of Florida residing in the City of Quincy.

34. The Chandler's ~~Hamburger Shop~~ serves and offers to serve interstate travelers. Its operation affects travel, trade, traffic, commerce, transportation or communications among, between and through the several states, the District of Columbia or foreign countries, territories and possessions. Further, on information and belief, a substantial portion of the food which it serves moves in commerce.

35. Plaintiffs incorporate and reallege paragraphs 1 to and including 29 of Courts I and II of this complaint.

36. Each of the acts committed by the defendants as alleged herein was done to enforce segregation and to discriminate against the plaintiffs on the ground of their being members of the Negro race.

37. The acts of discrimination practiced by the defendants against the plaintiffs as alleged herein is supported by action by the State of Florida, City of Quincy, within the meaning of the Fourteenth Amendment to the Constitution of the United States and Title II of the Act known as the "Civil Rights Act of 1964", and Title 42 U. S. C., Section 1981. Said discrimination is carried on under color of state law and under color of custom and usage required and enforced by officials of the State of Florida and political subdivisions thereof. And, in particular, officials of the State of Florida, and its political subdivisions, have arrested and prosecuted, and continue to attempt to prosecute, Negro citizens who have sought service at similar restaurants, which arrests, prosecutions, and attempted prosecutions are and have been for the deliberate purpose of aiding and abetting the proprietors of such establishments in carrying out a practice, custom and usage of discrimination against Negro citizens, and are too numerous to set out in any greater detail.

38. As plaintiffs are informed and verily believe, the racially discriminatory practices of defendants are in continuance of a long-established and maintained policy of defendants in the perpetuation of racial discrimination against American citizens of the Negro race.

39. The State of Florida has no State Law and the City of Quincy has no local law prohibiting the racially discriminatory practices described above, nor establishing or authorizing a State or local authority to grant or seek the relief prayed herein. Plaintiffs have no plain adequate or complete remedy at law to redress these wrongs, and this suit for injunction is the only means of securing adequate relief. Plaintiffs are now suffering and will continue to suffer irreparable injury from defendants' policy, practice, custom and usage as set forth herein.

WHEREFORE, Plaintiffs respectfully pray this Court to issue a temporary restraining order or, in the alternative, a rule nisi, advance this cause on the docket, order a speedy hearing at the earliest practicable date, cause this case to be in every way expedited, and upon such hearing to:

1. Forever enjoin defendants, CITY OF QUINCY, FLORIDA, R. D. EDWARDS, LEON WEAVER, PAUL GREGORY, C. W. HIRE, their agents, successors, employees, attorneys, and those acting in concert with them and at their direction from continuing or maintaining any policy, practice, custom or usage denying, abridging, withholding, conditioning, limiting, arresting, trying, punishing, incarcerating or otherwise interfering with plaintiffs and others similarly situated in the admission to and use and enjoyment of the goods, services, facilities, privileges, advantages and accommodations at Chandler's Hamburger Shop and other places of public accommodations on the basis of race or color as contrary to the Fourteenth Amendment of the Constitution of the United States, the Commerce Clause, Article I, Section 8, Cl. 3 of the Constitution of the United States, Title II of the Act known as the "Civil Rights Act of 1964," and Title 42 U. S. C., Section 1981.

2. Allow plaintiffs their costs herein, including reasonable attorney's fees and such other additional, relief as may appear to the Court to be equitable and just.

Respectfully submitted,

John Due
302 W. Tenth Street
Quincy, Florida

Charles Wilson
507 W. Gadsden
Pensacola, Florida

Earl Johnson
725 W. Union Street
Jacksonville, Florida

Herbert Heiken
763 Arthur Godfrey Road
Miami Beach, Florida

~~Jack Greenberg and Constance Motley~~
~~10 Columbus Circle~~
~~New York, New York 10019~~

Carl Rachlin
38 Park Row
New York, New York

~~Jefferson Greenup~~
~~10 Columbus Circle~~
~~New York, New York~~

ATTORNEYS FOR PLAINTIFFS

Ernst Rosenberg
80 William

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF FLORIDA

TALLAHASSEE DIVISION

CHARLES ROBINSON, a minor, by Mattie Mattie Robinson, his mother and next friend,

and

CHARLES HALL, a minor, by Dora Mae Bradwell, his mother and next friend

Individually and as representatives of a class

Plaintiffs

VS.

CITY OF QUINCY, FLORIDA, A minicipal corporation

R. D. Edwards, Individually and as an agent of said municipal corporation;

LEON WEAVER, in his capacity as Mayor of Quincy, Florida;

and

PAUL GREGORY, individually and as City Judge and Judge of the City Court of the City of Quincy, Florida

C. W. HAIRE, individually and as Chief of Police of Quincy, Florida

OTHO EDWARDS Sheriff of Gadsden County

Defendants

CIVIL CAUSE

No. _____

COMPLAINT

PLAINTIFFS' MEMORANDUM

1. The Congress of the United States has power to regulate interstate commerce. This power is plenary and Congress may enact all appropriate legislation for its protection or advancement.

The Daniel Ball, 10 Wall. 557, 19 L. Ed, 999

N. L. R. B. v. Jones and Laughlin Steel Corp., 301 U. S. 1, 57 S. Ct. 615, 81 L. Ed 893.

2. Such plenary power may be exerted to protect interstate commerce no matter what the source of the danger which threatens it.

Second Employers' Liabilities Cases, 223 U. S. 1,

32 S. Ct. 169, 56 L. Ed 327.

Board of Trade of the City of Chicago v. Olsen,

262 U. S. 1, 43 S. Ct. 470, 67 L. Ed 839.

3. A temporary restraining order will be granted by a United States District Court if such order is necessary to protect plaintiff's rights.

Youngstown Sheet & Tube Co., v. Sawyer, 103F

Supp, 978 (D. C. D. C., 1952).

"Civil Rights Act of 1964!, Section 204(a).

CONCLUSION

For the reasons above stated, plaintiff's prayer for a temporary restraining order, or in the alternative, an order to show cause, should be allowed.

Respectfully submitted,

John Doe
302 W. Tenth Street
Quincy, Florida

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF FLORIDA

TALLAHASSEE DIVISION

CHARLES ROBINSON, a minor, by Mattie Mae Robinson, his mother and next friend,

and

CHARLES HALL, a minor, by Dora Mae Bradwell, his mother and next friend

Individually and as representatives of a class

Plaintiffs

VS.

CITY OF QUINCY, FLORIDA, A municipal corporation

R. D. EDWARDS, Individually and as an agent of said municipal corporation;

LEON WEAVER, in his capacity as Mayor of Quincy, Florida;

and

PAUL GREGORY, individually and as City Judge and Judge of the City Court of the City of Quincy, Florida

C. W. HARE, individually and as Chief of Police of Quincy, Florida

OTHO EDWARDS Sheriff of Gadsden County

Defendants

CIVIL CAUSE

No. _____

COMPLAINT

SHOW CAUSE ORDER

Good cause appearing therefor and upon the verified complaint filed herein;

IT IS HEREBY ORDERED THAT the defendants herein, through their counsel, appear before this Court on the _____ day of _____, 1964, at the hour of _____ o'clock, _____ M. of the said day, at the United

States Courtroom, _____, Florida, to show cause, if any they have, why a temporary or permanent injunction should not issue against them as prayed for herein.

Done this _____ day of _____ 1964 at _____, Florida.

_____
JUDGE, UNITED STATES DISTRICT COURT

Quincy, Fla Case

et Musa
Quincy

An Analysis of John Due's Case-Robinson et al versus the City of Quincy,Fla.

The plaintiffs (two) separately tried to buy food from a previously Whites Only line in Chandler's Hamburger Shop. They were arrested and without being allowed to call anyone , they were brought before a magistrate, the next day, and convicted of being undesireable guests and trespassing. At no time were they oprised of their rights or allowed an attorney. Chandler's did not ask the plaintiffs to leave nor did he sign a complaint against them. The plaintiffs were sentenced to 30 days or one hundred dollars fine. After serving part of their sentences and while doing so being forced to do hard work, their fines were paid and they were released.

The complaint contains three counts. The first and second are tort actions for money damage, for false arrest and imprisonment, the deprivation of civil liberties, and for defamation of character. They are seeking 100,000 actual damage and 250,000 dollars punitive damages for each plaintiff.

Count Three- the plaintiffs are seeking an injunction against the defendants to prevent them from interfering with the plaintiffs' rights under the C.R.A. 1964.

Suit in equity

Juris. 28 U.S.C. 1343 and 1343(4)

Title 2 of C.R.A. 1964-Sec. 201 a2 , 201(d), 202, 203(a,b,c), 204(a,b) , 205(a)

Class Action-pursuant to Rule 23 a3 on behalf of all Negroes

Discrimination is carried on under color of law, custom and usage and is enforced by the officials of the state.

The plaintiffs are seeking an injunction against the defendants to prevent their interference with the integration of said eating establishment.

Notice of Appeal in Crum Case?

Carl Rachlin, Esq.
38 Park Row
New York, N. Y.

July 31, 1964

Dear Mr. Rachlin,

Ian the L.C.D.C. attorney currently [illegible] Citizenship Education Project in and around [illegible] spoken with John Doe about a complaint, [illegible] and checking, proposed to be filed in the [illegible] District of Florida entitled Sharlys [illegible] Quincy Florida et al.

I understand that there is a further [illegible] draft complaint that should be [illegible] that should be added following Paragraph [illegible] in Paragraph 21, one of the plaintiffs was in fact [illegible] time as (accompanied by his wife) [illegible] court and was bound over as an adult offender. [illegible] event, please get in touch with Attorney General [illegible] take statements from the plaintiffs.

John has asked me to bring this matter to your attention so the necessary corrections can be made. This seems particularly important [illegible] complaint is to be verified. If you have any questions, please [illegible] with John Doe or my successor, Brent Rosenberger, who will be [illegible] me within the next day or so. The letter can be posted [illegible] Quincy.

Sincerely,

[illegible]

Dear Carl:

- Here is a complaint for action which I am filing Tuesday morning through the office of LCDC lawyer James Lamberton and student Ned Taylor.

- Quincy phone numbers are 627-8458 and 627-7244. My phone number in Atlanta is 525-0595.

- This Monday, I want you to call me or leave a number where I can reach you.

- I plan the following actions:

(1) A suit against the registrars of Jefferson County, Madison County, Madison County.

(2) A suit against several places of public accomodation in Tallahassee, and Quincy.

(3) A suit against a private person who interferes with Negro exercising his civil rights under the Civil Rights Law for damages -

See You later,

John D. Pucci

SELFRE ROBINSON, ROBERT Z. VS. ROBINSON, ROBERT Z. WAYNE, MICHIGAN 1967 FLA Box 42 Folder 20

(EMPLOYEE RIGHTS - TERMINATION)

Please Retain Original Order

State Historical Society Of Wisconsin

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE

ROBERT Z. ROBINSON,

Plaintiff

-vs- No._____

ROBERT Z. ROBINSON,
the administrator of the
Estate of BERNICE ROBINSON,
AND OSCAR STEPHANS,

Defendant

COMPLAINT

Now Comes the Plaintiff, ROBERT Z. ROBINSON, by his attorney, ALLEN BIBB, in a complaint against the Estate of BERNICE ROBINSON deceased, and for his cause of action the plaintiff says:

1. That on the 28th day of November, 1966 Bernice Robinson, departed this life and at the time of her death in many years prior thereto she was the lawful wedded wife of the plaintiff ROBERT Z. ROBINSON.

2. That the plaintiff, ROBERT Z. ROBINSON, is a resident of the City of Detroit, County of Wayne, and the State of Michigan, and that BERNICE ROBINSON, was a resident of the City of Detroit, County of Wayne, and the State of Michigan, and that they were both residents of the City of Detroit, County of Wayne and the State of Michigan, on the 28th day of November, 1966

3. That as a result of this marriage there were no children born as issue thereof.

4. That the plaintiff ROBERT Z. ROBINSON, was employed for thirty (30) years by the City of Detroit in the Department of Public works and that he earned a good salary and that all of his earnings were turned over to the deceased prior to her death for safe keeping and that at the time of her death the deceased had on deposit in the Detroit Bank and Trust Company four-Thousand three-hundred eleven dollars and eighty cents ($4,311.80) and that said funds were being held in trust for the plaintiff ROBERT Z. ROBINSON AND THE deceased.

5. Plaintiff claims that the deceased Bernice Robinson left serviving her one brother who has no rights whatsoever to the funds held in the name of the deceased.

WHEREFORE, Plaintiff Prays,

a) that the Court determines that the $ 4,311.80 dollars are trust funds held for the serviver of either Bernice Robinson or Robert Z. Robinson.

b) That these funds be declared the sole property of the plaintiff Robert Z. Robinson.

c) That he should have such other relief and further relief as is justified by equality and good conscience

ROBERT Z. ROBINSON

ALLEN BIBB
Attorney for Plaintiff

****
1346 Broadway-Suite 800
Detroit, Michigan 48226
WOodward 1-7220

FORM E-101

STATE OF MICHIGAN

CIRCUIT COURT FOR THE COUNTY OF WAYNE

~~ROBERT 7. ROBINSON~~ Plaintiff

Civil Action # _____

vs.

ROBERT 7. ROBINSON, the administrator ~~of the estate of BERNICE ROBINSON~~ and OSCAR STEPHANS Defendant

Judge BENJAMIN D. BURDICK

SUMMONS

IN THE NAME OF THE PEOPLE OF THE STATE OF MICHIGAN:

To the above named defendant(s): Oscar Stephans
(Name of Defendant(s)

You Are Hereby Notified that a civil action has been commenced against you, and that if you desire to defend the same, you are required to answer or take such action as may be permitted by law with regard to the complaint herewith served upon you, within 20 days after service of this summons and complaint upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

Date: MAR 29 1967

EDGAR M. BRANIGIN, Clerk of the Circuit Court

D. Sims

D. SIMS

Deputy Clerk

~~Allen Bibb~~
(Attorney for Plaintiff)

(Signature of Attorney for Plaintiff)

~~1346 Broadway-Suite 800~~
(Business address)

W01-7220
(Phone No.)

Seal of the Court

STATE OF MICHIGAN }
COUNTY OF WAYNE } SS

I _____, hereby certify and return
(Deputy Sheriff)

that on the _____ day of _____, 19_____, at _____
(place of service)

_____, in the County of _____

I served a Summons and a copy of the Complaint and _____

in this action upon _____
(Name of Defendant(s)

known to be (one of) the defendant(s) named therein, by then and there delivering to (each of) said defendant(s) said summons and copy of above named documents.

Dated _____ 19_____

_____ SHERIFF

_____
Deputy Sheriff

STATE OF MICHIGAN }
COUNTY OF WAYNE } SS

_____, being duly sworn, deposes and
(Deponent)

says that he is a person of suitable age and discretion to serve process, and that on the _____ day of _____, 19_____,

at _____, in the County of _____,
(place of service)

he served a Summons and a copy of the Complaint and _____

in this action upon _____
(Name of Defendant(s)

known to be (one of) the defendant(s) named therein, by then and there delivering to (each of) said defendant(s) said summons and copy of above named documents.

Subscribed and sworn to before me

this _____ day of _____ 19_____

_____
Deponent

_____
Notary Public, Wayne County, Michigan

My Commission expires _____

961-7220

ALLEN BIBB
ATTORNEY AT LAW
1346 BROADWAY, SUITE 800
DETROIT 26, MICHIGAN

April 25, 1967

Mr Oscar Stephans
501 W.147th Street
New York, New York

Dear Mr.Stephans:

Enclosed here in please find a copy of the COMPLAINT & SUMMONS,

The orginials have been filed with the Court.

Respectfully yours,

Allen Bibb

ALLEN BIBB

AB/meg
Enclosure

SCHOLARSHIP,
EDUCATION AND
DEFENSE
FUND FOR
RACIAL EQUALITY inc.
150 NASSAU STREET
NEW YORK, N.Y. 10038
TELEPHONE 964-8210

May 9, 1967

A. L. Zwerdling, Esq.
3426 Cadillac Tower
Detroit, Michigan

Re: Robert Z. Robinson v. Robert Z. Robinson, the administrator of the estate of Bernice Robinson, and Oscar Stephans

Dear Mr. Zwerdling:

Enclosed are the papers in the case which I discussed with you this afternoon. Please advise me of your view of the matter.

I should mention that a substantial part of the funds in the account actually were deposited by the decedent, Bernice Robinson. It is also worth noting however, that the decedent promised our client that she would make a will leaving him one of two houses which she owned and the contents thereof. Apparently no will was left by Mrs. Robinson.

I should also mention that the passbook is in Mr. Robinson's possession.

Do you need an authorization, retainer or any other document from Mr. Stephans? If so, this can be arranged either through his cousin, Mrs. Shirley Lacy, 624-7747 in Newark, or through me.

Thanks for your time and attention.

Sincerely yours,

Stephen M. Nagler

Stephen Nagler, Esq.

SN/sl
enc.

Contributions are deductible for income tax purposes

■ *president;* Andrew E. Norman ■ *vice presidents;* William S. Ellis, Nannette Sachs ■ *secretary;* Ezra Levin ■ *treasurer;* Shelley Appleton ■ *executive director;* Marvin Rich ■ *leadership development director;* Ronnie M. Moore ■ *legal director;* Carl Rachlin ■ *BOARD OF DIRECTORS;* Nils R. Douglas, *chairman* ■ John P. Allison ■ Robert Ausnit ■ James Baldwin ■ Katrina McCormick Barnes ■ Canon James P. Breeden ■ Dr. Kenneth B. Clark ■ Robert Curvin ■ Charlotte Devree ■ Robert F. Drinan, S. J. ■ John Henry Faulk ■ Michael O. Finkelstein ■ Doris Freedman ■ Dr. Edward L. Gibson ■ James T. Harris ■ Claude Heckscher ■ Norman Hill ■ Clarence B. Jones ■ Dr. Archie Lacey ■ Joann List Levinson ■ Henry Morgenthau, III ■ Dr. William Stuart Nelson ■ Richard J. Schwartz ■ Elaine Slater ■ Norman Thomas ■ Rowland Watts ■ Pearl L. Willen

490

MSS
S46

SEDFRE TOWN OF ST. GEORGE (S.C.) VS ROBINSON, WALTER B., 1965
(DISORDERLY CONDUCT)

Box 42
Folder 27

State Historical Society of Wisconsin

Please Retain Original Order

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

IN THE COURT OF COMMON PLEAS

THE TOWN OF ST. GEORGE

-vs-

WALTER B. ROBINSON

MEMORANDUM

The defendant incorporates a copy of Section 10-1 of the Town Ordinances of St. George, South Carolina, and Section 16-558, Code of Laws of South Carolina, 1962, by reference. The trial record reflects on page 10, line 18, that counsel for the defendant made seasonable motions to dismiss on grounds that the State failed to establish a Prima Facie case in that there was no showing of disorderly conduct, and the only testimony is the use of "damn" once or twice. There was a further motion to dismiss on ground that the State failed to establish a Corpus Delicti in that they did not show that the acts alleged were actually committed. Finally, the motion was made to dismiss on ground that the defendant did not engage in any loud or outrageous language.

At a hearing, at Chambers, before your Honor on November 8, 1965, at St. George, your Honor requested a written memorandum on the question--whether or not utterance of the word "damn" under the circumstances of this case constitutes disorderly conduct--and such other statements as counsel would challenge. While the question is not a novel one in this state, there does not exist a voluminous number of cases on the subject.

Section 1 (1) under the caption-Disorderly Conduct-C.J.S., defines disorderly conduct as follows:

> Words and acts which tend to disturb the peace or endanger the morals, safety, or health of the community, or of a class of persons, or of a family, are punishable as disorderly conduct.

Section 10-1 of the Town Ordinances of St. George attempts to state what disorderly conduct is in St. George. Here it would appear that the alleged violation by the defendant is couched within that portion of Section 10-1 which states in part ".....or to engage in loud and unusual talking, cursing, hallowing, or outrageous language". Let us now consider the testimony on record as it applies to this portion of the Ordinance. There is no testimony in the record as to how loud the defendant was talking. Mr. Wagers, one of the police officers, testified that the defendant was arrested for using "bad language", (page 8, line 15), yet the only bad language allegedly used was the word "damn".

Considering further the court's reasoning in the case of City of Georgetown v. Scurry, 73 S.E. 353, 90 S.C. 346, and State v. Byrnes, 84 S.E. 822, 100 S.C. 230, loudness or loud cursing does not of itself constitute disorderly conduct. In the Byrnes case the Court said, "One is guilty of disorderly conduct if his language, considering the time and place, was calculated to produce disorder and to disturb the public peace and quiet". In the Scurry case the defendant called the Chief of Police a liarseveral times, clearly within the hearing of other at the courthouse, but the Court reasoned that this could not be considered a public use of profane language. In the case before us, the defendant allegedly used "damn" once or twice, but the word was directed to not a single member of the public. What was the time in this instance? The record reflects that it was after midnight. Counsel would even venture to say that the word even said during the daytime under most circumstances would not constitute disorderly conduct. The record clearly reflects that the streets were deserted; that when defendant went to the jail prior to his arrest he was in no respects disorderly; the arresting officer stated that the defendant tried to flag them down; he did not yell them to a stop or curse them to a stop. What then can we say was offensive to the public?

It is further urged that motion was timely made for dismissal on grounds that the Ordinance was vague, indefinite and uncertain, thereby depriving the defendant of rights guaranteed to him by Article I of the Constitution of South Carolina and the Fourteenth Amendment to the United States Constitution, We respectfully submit the following cases for your attention: State v. Standard Oil Company of New Jersey, 10 S.E. 2d 778, 195 S.C. 267; Bouie v. City of Columbia, 84 S. Ct. 1697, 378 U.S. 347. In the Ordinance before us there exist a serious jumbling of several offenses providing no reasonable means of distinction. The Courts reason that for the statute to be read after the commission of an alleged offense, and the offense gives meaning to the statute, such notice comes too late. The Courts require that one must have some reasonable standard or guideline as to what conduct constitutes what offense. Counsel for the defendant submits that no reasonable man could make such determination under this Ordinance.

For the reasons heretofore stated counsel for the defendant submits:

1. That the language of the defendant was not of a disorderly nature.
2. That the time at which the word was allegedly uttered could not have been calculated to produce disorder or disturb the peace and quiet.
3. That the Statute under which the defendant was charged was vague, indefinite, and uncertain.
4. That the Statute under which the defendant was charged did not sufficiently apprise him of the nature of the alleged offense, thus, unconstitutional; and,
5. That under the circumstances of this case, defendant could not be guilty of the offense charged.

Respectfully submitted,

FINNEY & GRAY
ATTORNEYS FOR DEFENDANT

By: _____
ERNEST A. FINNEY, JR.

COPY COPY COPY

STATE OF SOUTH CAROLINA COUNTY OF DORCHESTER	IN THE COURT OF GENERAL SESSIONS
THE TOWN OF ST. GEORGE -vs- WALTER B. ROBINSON	ORDER

The defendant was tried before Honorable W. Duncan Horne, Mayor of the Town of St. George, on the charge of disorderly conduct, on August 17, 1965. Representing the defendant was Ernest Finney, Esq., and J. Wilson Patrick, Esq., appeared on behalf of the Town of St. George. The defendant elected to be tried before the Mayor without a jury.

The Ordinance under which the defendant was indicted reads as follows:

"Section 10-1, Assault and Battery; Breach of Peace; Disorderly Conduct; Public Drunkenness; Obscenity.

It shall be unlawful for any person to commit any assault and battery, or assault, or engage in any breach of the peace, within the corporate limits of the Town, or in any riotous or disorderly conduct, unbecoming a good citizen, or to be found publicly drunk therein, or be guilty of any act of open obscenity, or to engage in any noisy, boisterous, threatening, indecent or dangerous conduct to the annoyance of any citizen of the Town, or to engage in loud and unusual talking, cursing, hallowing or outrageous language."

The warrant under which the defendant was arrested read as follows: "One Walter B. Robinson did violate the Ordinance of the Town of St. George and the laws of the State of South Carolina, by being disorderly and cursing while on U.S. Highway No. 78, or Society Street of said Town, in violation of Section 10-1"

The gist of the offense was that the defendant was guilty of disorderly conduct by cursing.

The defendant appealed upon numerous exceptions, but, while being aware of the many grounds, and having carefully studied all of them, I think the basic exceptions are:

(1) The warrant should have been dismissed because it was too vague and uncertain and did not fully appraise the defendant of the charges against him.

(2) The case should have been dismissed because there was no proof that defendant was guilty of disorderly conduct.

All other exceptions are overruled without further comment.

Exception (1) is overruled.

Only recently our Supreme Court has had this precise exception before it and Justice Lewis, speaking for the Court, reversed a conviction because of the failure to properly allege the offense. See State v. Randolph et al, 239 S.C. 79; 121 S.E. 2d, 349.

But the affidavit supporting the charge against the present defendant says: That on August 15, 1965, Walter B. Robinson was disorderly in the Town of St. George, S.C., by acting in a loud and boisterous manner and cursing while, - - - in said Town, - - - - against the form of the Ordinances, etc.

This clearly alerts the defendant of the charge against him. That is, a loud and boisterous manner and cursing. Surely this tells the defendant that he was cursing in a loud and boisterous manner; and that is the charge. Disorderly conduct.

We come now to the second exception which is that there was no proof of the offense of disorderly conduct. It will be seen, therefore, that the crust of this case turns on the question of whether the use of the word damn is, or can be disorderly conduct. Because the defendant was charged with disorderly conduct and the cursing was the manner in which the word damn was used.

Mr. Platt, the arresting officer, testified, as follows:

On page 4: "He was cursing and going on about a book and I arrested him."

"I grabbed him by the arm and put him in the car. He said he had to have a damn book that night."

"He wanted that damn book and he meant to get it. Kept carrying on, so I arrested him."

On page 6: "He was talking in a loud tone of voice and he

wanted his damn book that night." (Emphasis supplied)

Officer Wagers testified:

On page 8: "He had to have a damn book that Bo Kitty had. He had to have it. He kept on using bad language. He had to have that damn book and the jailer was not up, and he said 'damn if he wasn't going to get it.' Just such language as that." (Emphasis added)

The place of arrest was on one of the main traveled streets of the Town of St. George, which is also U.S. Highway No. 78, and it is not a question of whether or not citizens were disturbed because of the loud cursing and conduct of the defendant, it being in the night-time, but whether defendant's conduct was inherently offensive. The testimony clearly shows that the defendant was cursing in a loud voice, and demonstrated to the officers that his conduct was improper. The Mayor, sitting as the trier of the facts, found that the cursing and bad language of the defendant, under the circumstances related by the officers, was sufficient to sustain the charges in the Warrant, and the Mayor found the defendant guilty.

The defendant had a fair trial and was found guilty.

All exceptions are overruled.

James B. Morrison, Judge
Fifteenth Judicial Circuit.

Georgetown, S.C.

November 30, 1965

STATE OF SOUTH CAROLINA)

COUNTY OF DORCHESTER)

COURT OF GENERAL SESSIONS

DEC 20 1965

The Town of St. George

-vs-

Walter Robinson

Defendant

NOTICE OF INTENTION TO APPEAL

TO HONORABLE J. WILSON PATRICK, TOWN ATTORNEY FOR ST. GEORGE:

YOU WILL PLEASE TAKE NOTICE, that the defendant above named intends to and does hereby appeal to the Supreme Court of South Carolina from the Order of the Court of General Sessions for Dorchester County in the above matter, dated November 30, 1965, the case and exceptions to be hereafter served upon you.

Ernest A. Finney, Jr.

ERNEST A. FINNEY, JR.

RUBEN L. GRAY

Attorneys for Defendant.

December 9, 1965.

Due and legal service of the foregoing Notice is accepted and copy retained this day of December, 1965.

J. WILSON PATRICK, TOWN
ATTORNEY FOR ST. GEORGE.

LAW OFFICES
FINNEY AND GRAY
16½ WEST LIBERTY STREET
SUMTER, S. C. 29151

ERNEST A. FINNEY, JR.
RUBEN L. GRAY

P. O. BOX 836
TELE. 775-1737

December 9, 1965

DEC 20 1965

Mr. Carl Rachlin
Valdeck & Elias
Attorneys at Law
280 Broadway
New York 7, New York

Re: The Town of St. George
-vs-
Walter Robinson

Dear Carl:

Enclosed you will please find a copy of the following items:

1. Copy of Notice of Intention to Appeal and Exception to the Circuit Court.

2. Memorandum of this office to the Circuit Court of the above entitled matter.

3. Copy of Circuit Judge's Order upholding conviction.

4. Copy of Notice of Intention to Appeal to the Supreme Court of South Carolina.

5. Copy of statement sent by this office to Marvin Rich for expenses of appeal.

You will recall that this case involved Frank Robinson son, who was accused of using profane and abusive language while talking to an officer in St. George. This result of his being convicted and fined Ten ($10.00).

As you can see this matter has already cost many times more than the amount of the original fine. I need to know within seven days of this date what the desires of the organization are concerning proceeding the Supreme Court in this matter.

Yours very truly,

Ernest A. Finney, Jr.

JVL

Enclosures

LAW OFFICES
FINNEY AND GRAY
16½ WEST LIBERTY STREET
SUMTER, S. C. 29151

ERNEST A. FINNEY, JR.
RUBEN L. GRAY

P. O. BOX 836
TELE. 775-1737

January 8, 1966

JAN 12 1965

Mr. Carl Rachlin
Valdeck & Elias
Attorneys at Law
280 Broadway
New York, New York

Re: The Town of St. George
-vs-
Walter Robinson

Dear Carl:

On December 9, 1965, I wrote you regarding the above entitled regarding the proceeding in the Supreme Court. Will you please let me hear from you concerning this matter.

Thank you very much for your consideration and cooperation.

Yours very truly,

Ernest

Ernest A. Finney, Jr.

jvl

LAW OFFICES
FINNEY AND GRAY
16½ WEST LIBERTY STREET
SUMTER, S. C. 29151

ERNEST A. FINNEY, JR.
RUBEN L. GRAY

P. O. BOX 836
TELE. 775-1787

February 10, 1966

FEB 14 1966

Mr. Carl Rachlin
Valdeck & Elias
Attorneys at Law
280 Broadway
New York, New York

Re: The Town of St. George
-vs-
Walter Robinson

Dear Carl:

In accordance with your instructions and our telephone conversation of several weeks ago. I have agreed to the Dismissal of the Appeal in the above entitled matter.

Yours very truly,

Ernest A. Finney, Jr.

Ernest A. Finney, Jr.

EAF JR:jvl

cc: Mr. James T. McCain
Mr. Frank Robinson

MSS SEDFRE San Diego Gas & Electric vs San Diego C.O.R.E. Nov. 1963

State Historical Society of Wisconsin

Please Retain Original Order

Folder 22

LUCE, FORWARD, HAMILTON & SCRIPPS
SUITE 1220 SAN DIEGO TRUST & SAVINGS BUILDING
SAN DIEGO 1, CALIFORNIA
PHONE BEACHEY 2-0244

Attorneys for

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

SAN DIEGO GAS & ELECTRIC COMPANY, a California corporation, Plaintiff -vs- SAN DIEGO CONGRESS OF RACIAL EQUALITY, an unincorporated association affiliated with the CONGRESS OF RACIAL EQUALITY; CONGRESS OF RACIAL EQUALITY an unincorporated association; HAROLD K.BROWN, individually and as a member of said unincorporated associations and as Chairman of SAN DIEGO CONGRESS OF RACIAL EQUALITY, an unincorporated association; et al. Defendants.	No. 281132 FIRST SUPPLEMENTAL DECLARATION OF DAVID F.CURTIS

DAVID F. CURTIS declares:

That he was at all times herein mentioned employed by the San Diego Gas & Electric Company in the position of Claims Agent.

Your declarant is informed and believes and therefore alleges that persons whose acts are alleged herein as involving demonstrations such as walking back and forth with signs, sitting down in groups and otherwise will be called "pickets". At all times herein mentioned the pickets were purported to be acting for and on behalf of the Congress of Racial Equality and the San Diego Congress of Racial Equality.

On December 16 and 17, 1963, a number of pickets were demonstrating on the sidewalk adjacent to the Sixth Avenue entrance to the Electric Building, by carrying signs bearing various slogans

as mentioned in other declarations on file herein.

On December 17, 1963 at approximately 4:40 P.M. Harold Brown, defendant herein and one other picket entered the lobby area adjoining the Sixth Avenue entrance to the building, according to the information and belief of your declarant. Thereafter, other pickets seeking to enter the lobby were asked by a representative of the plaintiff if it was their intention to enter the building for the purpose of transacting business with the plaintiff and if it was not so their intention than please not enter the building in order to avoid congestion in the lobby area. The pickets, except for the two mentioned above, were then observed to remain outside but to form very closely together on the sidewalk area immediately adjacent to the two sets of double doors comprising the Sixth Avenue entrance. The pickets were formed so closely together that the southerly most of the double doors was completely blocked and the northerly doors almost completely blocked to the extent that it was very difficulty for members of the public and employees of the Gas & Electric Company to enter and leave through the Sixth Avenue entrance. The pickets remained in this position blocking the Sixth Avenue entrance from approximately 4:40 until 5:15 P.M. on December 17. Approximately seventeen pickets in number were involved in blocking the doors and in the accompanying sidewalk demonstration.

I certify under penalty of perjury that the foregoing is true and correct, except as to matters therein stated upon information and belief, and as to those matters I believe it to be true. (C.C.P. 2015.5)

Executed at San Diego, California this ___day of December, 1963.

David F. Curtis

MSS SEDFRE

SANDERS, RITA et.al. VS. ELLINGTON, BUFORD et.al. NASHVILLE, TENNESSEE
(SCHOOL CASE)

Box 42
Folder 23

State Historical Society of Wisconsin

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IN THE UNITED STATES DISTRICT COURT

FOR THE MIDDLE DISTRICT OF TENNESSEE

NASHVILLE DIVISION

RECEIVED FOR ENTRY
12:25 PM
AUG 23 1968
BRANDON LEWIS, CLERK
Frank Williams D.C.

RITA SANDERS; PATRICK J. GILPIN; ERNEST TERRELL; HAROLD SWEATT; and PHILLIP SWEATT, Individually and as Next Friend of Phillip Sweatt; Citizens and Residents of the State of Tennessee, and Citizens of the United States,

Plaintiffs;

THE UNITED STATES OF AMERICA,

Plaintiff-Intervenor;

VS.

CIVIL ACTION NO. 5077

BUFORD ELLINGTON, Governor of the State of Tennessee and Chairman of the Board of Trustees of the University of Tennessee; HOWARD WARF, Commissioner of Education of the State of Tennessee and Chairman of the Tennessee State Board of Education; TENNESSEE STATE BOARD OF EDUCATION, a State Agency; TENNESSEE HIGHER EDUCATION COMMISSION, and its Chairman, JOHN R. LONG, JR.; THE UNIVERSITY OF TENNESSEE, and its President, ANDREW HOLT; BOARD OF TRUSTEES of the University of Tennessee, and its Vice Chairman, WASSELL RANDOLPH; TENNESSEE A & I STATE UNIVERSITY, and its President, WALTER DAVIS, and its President-elect, ANDREW P. TORRENCE; INTERIM COMMITTEE for Tennessee A & I State University and the members of said Interim Committee, ARTHUR DANNER, WILLIAM JACKSON, and GRANVILLE SAWYER,

Defendants.

OPINION

The following is the text of opinion delivered from the Bench on August 21, 1968. Material in brackets has

been added to the opinion as delivered.

This action was brought in an effort to prevent the University of Tennessee from constructing a new facility for expanding its program at the Nashville Center. The original plaintiffs are: a member of the faculty at Tennessee A & I State University; a member of the faculty of the University of Tennessee Nashville Center; a Negro student at Tennessee A & I State University; a Negro senior student at Wilson County High School; and the father of this high school student.

Although there has been no question raised by the parties either as to jurisdiction or as to whether this is a proper class action under Rule 23, Federal Rules of Civil Procedure, the court finds that it does have jurisdiction and it further finds that the action can be sustained as a class action.

The original defendants in the action were: the Governor of Tennessee, Chairman of the Board of Trustees of the University of Tennessee; the Commissioner of Education for the State, Chairman of the Tennessee State Board of Education; the Tennessee State Board of Education itself; the Tennessee Higher Education Commission and its Chairman; the University of Tennessee and its President; the Board of Trustees of the University of Tennessee and its Vice-chairman; Tennessee A & I State University and its then President, supplemented later by making as an additional party the newly-designated President of the University; the Interim Committee at the Tennessee A & I State University; the United States Department of Health, Education, and Welfare and its chief executive officer; and the United States Office of Education and its chief executive officer.

By order previously entered the action was dismissed as to the federal defendants.

Subsequently the United States moved to intervene

as a party plaintiff under the Civil Rights Act, 42 U.S.C. 2000(h)(2), and finding that the statutory requirements were met and that the motion was timely, the court granted the motion to intervene.

By its complaint in intervention the United States seeks not only an injunction to prevent the construction of the new facility, but also asks that this court order the State defendants to present a plan calculated to produce meaningful desegregation of the public universities of Tennessee.

In considering this case it is necessary, in my opinion, to put the present situation in perspective. The history of public educational opportunities for Negroes in Tennessee is not a pretty one. Prior to the Supreme Court decision in Brown v. Board of Education in 1954 [347 U.S. 483] the public educational system of Tennessee operated under one-half of the decision of the Supreme Court in Plessy v. Ferguson of 1896 [163 U.S. 537]. The races were certainly kept separate in the schools, but I would assume that no one would argue in good faith that the schools were equal.

The lone institution for so-called higher learning operated by the State of Tennessee for Negroes was the institution now designated as Tennessee Agricultural and Industrial State University. One of its chief functions was, according to the statutory history, the training of teachers.

Response to the decision of the Supreme Court in 1954 by the State was slow and reluctant. Although the blatant racism exhibited by some of the political leaders in states to the south of Tennessee was happily absent here, delay was the order of the day. The dockets of this court and the dockets of the courts in the other districts of Tennessee indicate that most of the progress which took place in the integration of the

elementary and secondary schools of the State came as a result of court action. Insofar as its universities are concerned, some six years elapsed before racial requirements for admission were formally abolished.

The record does show, however, that now all institutions of higher learning are at this time pursuing an open-door policy.

Complaint is made here that the dual education system admittedly heretofore established by law in Tennessee has not been dismantled and, to support this allegation, figures have been introduced showing that the historically white institutions still have overwhelmingly white enrollments, and the Tennessee A & I State University still has an overwhelmingly Negro enrollment.

Figures introduced at this hearing indicate that some 57,000 students attend the State's public universities, of whom slightly over 6,000 are Negroes, or approximately 11 percent of the total.

In the individual traditionally white institutions the percentage of Negro enrollment ranges from six-tenths of one percent to a high of about 7 percent at Memphis State University. Incidentally, Memphis State University's percentage is not closely approached by any of the other schools.

On the other hand, Tennessee A & I State University continues substantially all Negro with a Negro enrollment in excess of 99 percent.

Based on the foregoing, the court finds that the dual system of education created originally by law has not been effectively dismantled. It appears, with the possible exception of Memphis State University, that progress toward desegregating these institutions in the eight years of the open-door policy

has been slow. The reasons for this slow progress are, as I view the record, many and diverse.

I do not find, however, that the defendant Board of Trustees for the University of Tennessee or its administrative officials or the State Board of Education operating the other Tennessee public institutions of higher learning or its administrative officials are now or have been in the recent past, and I emphasize recent, guilty of any constitutionally impermissible acts in the administration of the institutions. Rather, it appears to the court clearly evident that the present situation is the result of mistakes and inequities in the past.

Dramatically portraying the results of past unequal educational opportunities is the material made a part of the record by Stipulation No. 19. It shows the results of tests administered by the American College Testing Program to the students who comprised the freshman student bodies in the fall of 1967 of the various state universities.

It shows that the mean score of the freshman classes at the historically white institutions range from 18.3 at Austin Peay State University to 22 at the University of Tennessee. On the other hand, it shows that at Tennessee A & I State University the mean score was 11.9 and that 78 percent of that freshman class had scores of less than 16. Educators who testified here indicated, it seems fair to say, substantial agreement that 16 would be the minimum indication of ability to perform acceptably at the college level.

Since further information in this stipulation shows that the high school achievement records of these students, based on the average of their high school grades, varied very little, ranging from 2.49 to 2.73 on a 4-point basis, with A & I State at 2.59, it is clearly evident that the A & I students in the main came from high schools where the grading methods and

scholastic standards were substantially different from the high schools from which the freshman classes at traditionally white schools were chiefly drawn.

It thus appears that the problems faced by the state universities in achieving desegregation of their student bodies are problems not of their making. The record does show that there is a rapidly accelerating trend in substantial portions of the State toward the elimination of what have been known in the past as Negro high schools. The results of this trend, however, were apparently not reflected in the freshman classes of 1967.

The University of Tennessee Nashville Center was established some twenty years ago to provide evening courses for employed persons who could not attend regularly scheduled classes at ordinary day institutions. The record indicated that the University made this step in Nashville at the request of Nashville citizens when other schools located in Nashville discontinued evening offerings. The Nashville Center remains primarily an evening program. The enrollment has steadily grown and the number of course offerings has gradually increased to the point that students can now complete their requirements for a degree at the Nashville Center.

In addition to its evening program the Nashville Center operates the graduate school of social work for the University of Tennessee. At the request of Nashville Metropolitan Board of Hospitals, the Center has just begun to offer a two-year day program leading to the degree of Associate of Arts in Nursing.

From the record it appears that the University of Tennessee plans to construct a new building for the Nashville Center to provide more adequate space and facilities for the constantly growing programs mentioned above. In addition, the

University seeks to provide for use of the new facility by other programs. The Government-Industry-Law Center of the University of Tennessee has planned to use the facilities of the new building for its Center for Training and Career Development. This program, which was begun in June of last year, is designed to provide continuous in-service training and career development for state and local government employees.

Further, the record indicates that the new facility is designed to provide space for statewide or regional conferences, seminars and workshops which are held in conjunction with the University's continuing education program.

Comparable programs at A & I consist of a nursing course and a limited evening program begun in recent years.

There is nothing in the record to indicate that the University of Tennessee has any intention to make the Nashville Center a degree-granting day institution. On the contrary, the record clearly indicates and the court finds that, in its expansion program for the Nashville Center, the University of Tennessee seeks only to provide a quality continuing education and public service center for Nashville and Middle Tennessee with overwhelming emphasis being placed upon the provision of educational opportunity for employed persons of all races who must seek their education at night.

I do not find that the proposed construction and operation of the University of Tennessee Nashville Center will necessarily perpetuate a dual system of higher education. It may well be that, under the provisions of what I shall say later on in this opinion, this additional educational facility in the Nashville area may play a part in the furthering of a unitary system.

I specifically point out that, in reaching this

decision that injunctive relief should be denied, I have not grounded it on the recent case of Alabama State Teachers Association v. Alabama Public School and College Authority [_____ F. Supp. _____, Civil No. 2649-N (M.D. Ala., July 26, 1968)], involving the construction in Montgomery, Alabama, by Auburn University, a historically white institution, of a facility completely duplicating a historically Negro public college in that City.

Having said as I did earlier that many of the problems facing the responsible authorities in attempting desegregation of the public universities are not of their making does not mean that thereby they are relieved of the responsibility of achieving a desegregated system of higher education.

Upon consideration of the relevant precedents, particularly the decision of the Supreme Court in Green v. County School Board of New Kent County [_____ U.S. _____, 20 L. Ed. 2d 716 (1968)], and its companion cases, the court is convinced that there is an affirmative duty imposed upon the State by the Fourteenth Amendment to the Constitution of the United States to dismantle the dual system of higher education which presently exists in Tennessee.

The next question is whether the State is discharging this duty or has indicated that it has any plan to discharge this duty. In resolving this question the court has not attempted to fashion a comprehensive definition of what the duty requires. The court has, on the other hand, examined the record carefully in an attempt to determine what steps, if any, have been taken by the State of Tennessee through its higher educational institutions to disestablish the dual system.

From this examination the court has come to the conclusion that the University of Tennessee and the historically white institutions under the Tennessee Board of Education have made at least some good faith efforts to bring about desegregation

of their institutions. I cannot say that I find any indication from the record, incomplete as it is, that the individual school administrators at these institutions are failing to do what is within their individual powers to do to desegregate their institutions.

Insofar as these historically white institutions are concerned, when everything is considered, including the geographic location of the various institutions, the quality of secondary schools surrounding them and the number of available Negro students who are qualified for admission, it appears that genuine progress is being made.

However, the court does not find it necessary to decide whether these efforts have fulfilled the duty of the individual institutions, because the fact remains that nothing has been done to dismantle effectively the dual system so graphically illustrated by the enrollment at Tennessee A & I State University.

Nothing has been shown in the record to indicate that any plan has been proposed, devised or considered to lead to the desegregation of that University except the naked fact of an open-door policy. The court is convinced that this policy alone does not discharge the affirmative duty imposed upon the State by the constitution where, under the policy, there is no genuine progress toward desegregation and no genuine prospect of progress.

Therefore, the court will enter an order requiring the defendants to submit to the court a plan designed to effect such desegregation of the higher educational institutions of Tennessee, with particular attention to Tennessee A & I State University, as to indicate the dismantling of the dual system now existing.

Since any major change of policy at one State

university will necessarily affect the other State universities, including the University of Tennessee, and, since any sound plan would seem to the court to require cooperative efforts by all the higher educational institutions of the State as well as the Board of Education and the Tennessee Higher Education Commission, the burden of coming forward with such a plan will remain on all the defendants.

The court has been impressed by the fact that at long last the State legislature has taken a step toward the coordination of the efforts made by the State in the field of higher education by the creation of the Tennessee Higher Education Commission, which is a defendant herein.

Now, in considering the time element for presentation of a plan, I have thought of the complexities of the problem. I recognize that the simple remedies which might be available to a county school board where there is involved a compulsory system of education, a free system of education, and assignment of students, are not available here. Colleges are not compulsory and everyone can testify that they're not free.

Any program must necessarily depend upon its success on whether it makes the institution attractive to students who will exercise a free choice as to where they attend college. For that reason, I'm giving a substantial amount of time for the submission of such a plan.

Before I state that, let me state that I have been concerned by a fact that clearly appears from the record, although it was not specifically commented on by any witness, that the failure to make A & I a viable, desegregated institution in the near future is going to lead to its continued deterioration as an institution of higher learning. I think everybody recognizes that. It is clearly apparent on the record that something must

be done for that school and that the one thing that is absolutely essential is a substantial desegregation of that institution by whatever means can be devised by the best minds that the State of Tennessee can bring to it.

I will provide that the plan to be submitted shall be submitted on or before April 1, 1969.

I will ask counsel to prepare an appropriate order in which the two salient factors of this decision will be set forth; that is, the denial of relief insofar as the prevention of the expansion of the University of Tennessee's program for its Nashville Center, and the provision for the submission of a plan.

Frank Gray, Jr.
UNITED STATES DISTRICT JUDGE

ATTEST: A TRUE COPY

Brandon Lewis, Clerk
U. S. District Court
Middle District of Tennessee
By: Frank Williams D.C.

George E. Barrett, Esq.
Barrett, Creswell & Mitchell
10th Floor, Third National Bank Building
Nashville, Tennessee 37219

Dear Mr. Barrett:

We hope you will excuse this tardy reply to your letter of August 29, 1968.

After studying Judge Gray's opinion in Sanders v. Ellington, we believe that the reasoning is inconsistent with the result; enjoining the construction of the Nashville Center and, instead, broadening the programs at Tennessee A&I appears to be the obvious way to begin dismantling the dual system of higher education in Tennessee. Furthermore, allowing the State until April 1, 1969 for the submission of a plan seems to be an excessive amount of time for the task.

Although we find the decision an unhappy one, we are uncertain as to how it might most effectively be attacked. You might be able to apply for a rehearing on the ground that the decision is inconsistent with the reasoning. Of course, you could always appeal if the time interval would not prejudice your case.

Hopefully we have been of some assistance to you. Please do not hesitate to contact us again.

Yours truly,

Carl Lachlen

Carl,

This is the draft letter to George Barrett that you asked me to write (re U. of Tennessee case).

Steve Schlakman

SAVIO, MARIO et al. VS. CALIFORNIA 1965
(SIT-IN)

State Historical Society Of Wisconsin

Please Retain Original Order

IN THE MUNICIPAL COURT FOR THE BERKELEY-ALBANY JUDICIAL DISTRICT

COUNTY OF ALAMEDA, STATE OF CALIFORNIA

People of the State of California)	
)	Cr. Nos. 7468 through 7547
)	
v.)	MOTION FOR PRETRIAL HEARINGS
)	AND FOR CONSOLIDATION FOR
)	PURPOSES OF PRETRIAL HEARINGS
Mario Savio, et. al.,)	
Defendants.)	

To the Honorable Rupert Crittenden, Judge of this Court:

Defendants in these cases move for formal pretrial hearings and for consolidation for purposes of those pretrial hearings.

This motion is based on the files in these cases, the provisions of Code of Civil Procedure §128 and of Penal Code §954, and the memorandum filed together with and in support of this motion.

Dated: January 26, 1965.

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IN THE MUNICIPAL COURT FOR THE BERKELEY-ALBANY JUDICIAL DISTRICT

COUNTY OF ALAMEDA, STATE OF CALIFORNIA

The People of the State of California v. Mario Savio, et. al. Defendants.	Cr. Nos. 7468 through 7547 MEMORANDUM IN SUPPORT OF MOTION FOR PRETRIAL HEARINGS AND FOR CONSOLIDATION FOR PURPOSES OF PRETRIAL HEARINGS

I.

JOINT PRETRIAL HEARINGS ARE REQUIRED (A) TO ENSURE THAT JUSTICE IS ACCORDED DEFENDANTS; (B) IN THE PUBLIC INTEREST; AND (C) IN THE INTEREST OF THE ADMINISTRATION OF JUSTICE. 1

A.

EIGHTY SEPARATE TRIALS WILL DENY DEFENDANTS DUE PROCESS OF LAW AND EQUAL PROTECTION OF THE LAWS EVEN THOUGH THE PROPOSED PROCEDURES ARE STANDARD FOR ORDINARY CASES; IN THE CIRCUMSTANCES OF THIS CASE ONLY NEW PROCESS CAN POSSIBLY AFFORD DUE PROCESS. 1

1. Defendants have a right to be heard on trial plans for their case when those adopted may drastically affect their ability to present their defenses and therefore may well affect the ultimate outcome of their case. Joining defendants in 80 separate complaints constitutes an ex parte, nonjudicial pretrial order. 1

2. Eighty separate trials will deny most if not all defendants of the right to effective counsel. 4

3. Eighty separate trials will deny most if not all defendants the right to have their guilt or innocence determined by an unprejudiced jury. 5

4. Eighty separate trials will make it impossible for most if not all defendants to present their defenses to the charges against them adequately. 6

5. Eighty separate trials will deny all defendants equal protection and enforcement of the laws and will make a mockery of the administration of justice in our courts. 7

B.

PRETRIAL HEARINGS TO EXPLORE THE POSSIBILITIES FOR ELIMINATION OF MOST OF THE PROSPECTIVE 80 TRIALS ARE REQUIRED TO ENSURE PUBLIC ACCESS TO UNCLOGGED COURTS FOR THE ADMINISTRATION OF JUSTICE IN OTHER PENDING AND FUTURE CASES. 8

C.

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1. As officers of the Court and participants in the administration of justice, defense counsel recognize that their responsibility in a criminal case includes the just and proper administration of the system in which they have been trained and in which they play an important role. 8

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F.

UNDER ALL THREE CHARGES, DEFENDANTS' MOTIVES ARE RELEVANT. PRETRIAL HEARINGS ARE ESSENTIAL TO DETERMINE HOW BEST, CONSISTENT WITH A FAIR TRIAL, TO PRESENT EVIDENCE OF THEIR MOTIVES WITHOUT UNDULY DELAYING ONE OR EIGHTY TRIALS, AND TO ENSURE THAT RULINGS ON ADMISSIBILITY OF EVIDENCE OF MOTIVE WILL BE UNIFORM IF THERE IS MORE THAN ONE TRIAL. 46

1. Defendants' purposes have a direct relevance to the issue of whether they were in pursuit of "lawful business" as used in Penal Code §602(o).. 46

2. Defendants' purposes have direct relevance under Penal Code §409 to the issue whether in fact their assembly was "unlawful." 46

3. Defendants' reasons for "going limp" have a direct relevance to the issue whether they resisted, delayed, or obstructed a public officer in the performance of his duty. 46

4. The manner of proving purpose should be as economical and brief as possible consistent with a fair presentation to the trier of fact. 47

5. How and under what circumstances purpose is relevant to all charges should be determined in advance of any trials

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G.

EVEN IF ONE OR MORE OF THE CHARGES AGAINST THE DEFENDANTS CAN BE APPLIED TO ANY OR ALL OF THEM, THEY CAN BE PUNISHED ONLY ONCE. 47

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I.

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I.

JOINT PRETRIAL HEARINGS ARE REQUIRED (A) TO ENSURE THAT JUSTICE IS ACCORDED DEFENDANTS; (B) IN THE PUBLIC INTEREST; AND (C) IN THE INTEREST OF THE ADMINISTRATION OF JUSTICE.

A.

EIGHTY SEPARATE TRIALS WILL DENY DEFENDANTS DUE PROCESS OF LAW AND EQUAL PROTECTION OF THE LAWS EVEN THOUGH THE PROPOSED PROCEDURES ARE STANDARD FOR ORDINARY CASES; IN THE CIRCUMSTANCES OF THIS CASE ONLY NEW PROCESS CAN POSSIBLY AFFORD DUE PROCESS.

In matters of decided procedural importance, ritual should not be "king as well as the joker." Traynor, Ground Lost and Found in Criminal Discovery, 39 N.Y.U. L. Rev. 228, 234 (1964) (criticizing federal limitations on pretrial inspection of documents). One of the major functions of the procedural due process concept is to ensure the reliability of the guilt-determination process. Kadish, Methodology and Criteria in Due Process Adjudication: A Survey and Criticism, 66 Yale L.J. 319, 346 (1957). Even apart from due process considerations, there is a strong current trend to eliminate the "chance" element in criminal trials. Thus the recent evolution of pretrial criminal discovery in California is designed "to promote the orderly ascertainment of the truth." Jones v. Superior Court (1962) 58 C.2d 56, 60, 22 C.R. 879, 881. It is with these underlying concepts in mind that defendants seek pretrial hearings.

1. Defendants have a right to be heard on trial plans for their case when those adopted may drastically affect their ability to present their defenses and therefore may well affect the ultimate outcome of their case. Joining defendants in 80 separate complaints constitutes an ex parte, nonjudicial pretrial order.

The general right to be heard is too well established to be contested. The right is normally concerned with settlement of issues on their merits. When the procedures adopted may drastically affect the merits, however, the right to be heard must be extended to procedural

questions as well. Otherwise the right to be heard on the merits could easily be denied indirectly in the guise of procedural rulings.

There were 779 defendants arrested. Their acts were jointly committed pursuant to a commonly accepted plan. Viewed jointly, there was but one transaction, and one complaint could have been filed. Viewed as individuals, 779 complaints could have been filed. The District Attorney understandably shrank from either of these choices, and apparently joined them for his convenience at 80 trials.

Penal Code §1098 provides:

> When two or more defendants are jointly charged with any public offense, whether felony or misdemeanor, they must be tried jointly, unless the court order separate trials. In ordering separate trials, the court in its discretion may order a separate trial as to one or more defendants, and a joint trial as to the others, or may order any number of the defendants to be tried at one trial, and any number of the others at different trials, or may order a separate trial for each defendant; provided, that where two or more persons can be jointly tried, the fact that separate accusatory pleadings were filed shall not prevent their joint trial.

Penal Code §1098 clearly intends that, in the interest of expediting criminal cases, joint trials shall be the rule, whether joint defendants are charged jointly or separately. The Court is given discretion, however, to order separate trials if some defendants might be prejudiced by the case presented against others. It is unlikely that the Legislature contemplated the problem of severance in cases where the number of defendants was so large that it might be felt that a joint trial would not be feasible. Criminal conduct is not normally committed en masse, and mass conduct is not normally dealt with by criminal process.

The reason for joint trials was well stated in Daley v. United States (1st Cir. 1956) 231 F.2d 123, 125:

> The federal rules are designed to promote economy and efficiency and to avoid a multiplicity of trials, where these objectives can be achieved without substantial prejudice to the right of the defendants to a fair trial.

It is ordinarily the prosecutor who seeks a joint trial. The defendant normally seeks severance because he believes that a joint trial will not be a fair one. Defendants here suggest that when a large number of people are charged with the same offense, whether in

a single complaint or in separate complaints, the initial assumption must be that there will be a joint trial, that both the State and the defendants have a right to be heard on the question of severance, but that the Court must decide the matter, either ordering separate trials or refusing to do so. The District Attorney, by filing separate complaints against groups of ten or fewer defendants, has seemingly accomplished what he had no power to do. He has essentially made an ex parte order grouping the defendants for trial. Defendants submit that this is a matter for the Court to determine and have therefore moved for consolidation for the purpose of hearing argument (1) on the desirability and validity of severance and, assuming it is found by the Court to be desirable and proper, (2) on the nature of the severance.

No instance is known of the arrest of a group as large as the number arrested in this case. That fact is the omnipresent reason for the novelty of many of the questions raised by this case. The immediate question, whether the District Attorney may make a de facto ex parte order of severance, is one on which there is no authority. It can be asserted, however, that reported decisions that may bear on this question are not inconsistent with defendants' position.

In a number of conspiracy cases, defendants urged it is necessary to charge jointly all parties to the conspiracy. The courts have held that it is not, generally on the ground that neither the prosecution nor the grand jury can reasonably be expected to know the names of all the parties to the conspiracy. See People v. Sacramento Butchers' Association (1910) 12 C.A. 471, 107 P. 712; Goldberg v. United States (5th Cir. 1924) 297 F. 98; Vannata v. United States (2d Cir. 1923) 289 F. 424; United States v. Heitler (N.D. Ill. 1921) 274 F. 401. Here, however, all participants to the acts charged are known. Some cases may appear on their face to be contrary to the proposition urged, but they indicate that the prosecutor chose to proceed against only one member of a conspiracy in order to keep pressure off another whom he expected to turn State's evidence. See People v. Richards (1885) 67 C. 412, 7 P. 828. In this case, the prosecution is proceeding against all defendants.

The California Supreme Court has stated, in regard to the power of a district attorney to file informations against several defendants,

> . . .Is it mandatory upon the district attorney under the indicated circumstances to file a joint information? We are not advised of any law so declaring. It is within his discretion to inform against them either jointly or severally. The state may determine whether it will proceed against defendants accused of the commission of a single crime, either jointly (with the privilege to each of them of securing a separate trial) or separately, as was done in this instance. Unquestionably a grand jury may so return indictments, and the same course should be and is open to the district attorney.

People v. Plyler (1898) 121 C. 160, 162, 53 P. 553, 554. On its facts, however, Plyler involved only two defendants; thus the Court was not called on to determine whether a district attorney has power to charge defendants other than all together or all separately.

Whatever the power of the District Attorney, the effect of his assertion of power to charge the defendants for his convenience for 80 trials should not preclude defendants from a hearing, after discovery, on possible alternative groupings that may be equally convenient for the prosecution and fairer to defendants. It may even be possible to devise means for having only one trial.

2. Eighty separate trials will deny most if not all defendants of the right to effective counsel.

The complexity of the legal and factual issues raised by the 80 complaints are outlined in the second part of this memorandum. No one with experience in protracted litigation can deny the necessity for extended advance preparation for trial. See, e.g., California Civil Procedure Before Trial, Chapter 2 (Cal. C.E.B. 1960), on the single problem of preparing and organizing trial materials. See also Judge Carter's discussion of "big cases" in Federal Civil Practice, Chapter 7 (Cal. C.E.B. 1961).

It is unrealistic to expect 80 groups of attorneys to undertake the necessary preparation for 80 separate trials, particularly when several trials may be in progress simultaneously. It is equally unrealistic to expect one group of attorneys to defend in all 80 trials, even assuming no two were conducted simultaneously and all resulted in

acquittals so that there were no appeals to prepare. The only realistic approach is to consider the 80 complaints together and work out sensible trial alternatives that will be consistent with a fair trial.

3. Eighty separate trials will deny most if not all defendants the right to have their guilt or innocence determined by an unprejudiced jury.

It is a truism among experienced criminal law practitioners that publicity often fans public indignation until truth is obscured, and that, although theoretically a defendant is innocent until proved guilty, community attitudes do not always reflect support of this theory.

The second part of this memorandum indicates that defendants' conduct was not illegal in the criminal sense. The attitudes of prospective jurors are therefore extraordinarily important in this case. For, even if not illegal, defendants' conduct -- which was widely publicized -- was not popular among substantial segments of the community from which the jurors will be selected.

In addition to the typical problems, these special problems may arise if 80 trials are held:

(a) Press coverage of the first trials, if they result in convictions for the reasons noted above, could precipitate a "bandwagon effect" in later trials. This effect could well increase in intensity in direct proportion to the number of trials.

(b) The greater the number of trials, the greater will public resentment be toward defendants for wasting taxpayers' funds and for clogging the court's calendar. This resentment will most likely arise even though defendants are by this motion attempting to avoid numerous trials. The defendants in the San Francisco sit-in trials sought joint trials for all defendants who had "demonstrated" at one time and place. This motion was denied, yet today few people who read only the newspapers' accounts know that such a motion was presented. In short, despite attempts made by defendants to forestall a disruption of the normal judicial processes in Berkeley, if 80 trials are held, defendants will be responsible for that fact in the eyes of the community from which the jurors will be selected.

(c) While it cannot be asserted with certainty in the absence of extensive preparation for trial, it is quite probable that many defendants will be important witnesses in all trials held. If those defendants, or any of them, are convicted in their trials, they will then testify with a conviction on their record. While that fact could not be brought out as a matter of impeachment by the prosecution, it would be naive to assume that later jurors would be unaware of the prior convictions of testifying codefendants. Thus defendants in later trials have potentially greater chances of unfairness than those tried earlier for the same offenses.

4. Eighty separate trials will make it impossible for most if not all defendants to present their defenses to the charges against them adequately.

Defendants committed joint acts. The evidence relevant to the issues raised by the charges will be the same, at least for most if not for all. (Those defendants, if any, with personal defenses not shared by others probably should be segregated for purposes of trial.) Only a moment's thought makes it clear that with simultaneous trials (and possibly later appeals) only chaos, which will make a mockery of justice, can result. The same real evidence and witnesses may be needed at the same time by different defendants for different trials; counsel in an earlier case may need the transcript of his trial for his appeal when trial counsel in a pending case needs it for impeachment of a prosecution witness; the same TV tape may be needed for pending appeals and pending trials; etc. Only if the prosecution, at great taxpayer expense, is willing to make many, if not 80, copies of all relevant real evidence, transcripts, etc., will 80 trials be even feasible in the crudest sense of due process.

In addition, apart from the interests of the defendants to present relevant evidence, what are the interests of witnesses who may be called for 80 trials? Reading their prior testimony might be one answer, but can and should defendants be deprived of a "live" witness in their behalf merely because they happen to draw a high complaint number?

The problems implicit in trying in 80 segments some 780 defendants who committed a single, joint act could be extended for pages, but to little purpose. The important point is: It will be virtually impossible to try 80 cases properly, even assuming an unlimited supply of adequate counsel for both the State and the defendants.

5. Eighty separate trials will deny all defendants equal protection and enforcement of the laws and will make a mockery of the administration of justice in our courts.

Unquestionably the most distressing problem to emerge from the San Francisco sit-in trials was that of uneven justice. Justice is properly associated with a scale, not a roulette wheel. Yet if the San Francisco experience is an indication -- and there appears to be no reason why it is not -- unequal justice is virtually inevitable, if not in judgments, certainly in sentencing in this case.

It is defense counsel's position that motive is relevant under the charges. The question of motive also arose in the San Francisco cases. Some judges allowed evidence of motive and gave appropriate instructions on motive; others did not. As a result, there were different judgments even though the trials, properly considered, were actually segments of a single trial. Disparity in sentences was even more shocking in the San Francisco cases. They varied from simple fines up to 270 days' imprisonment, depending largely on the judge.

Besides the chance elements of which judge and jury are drawn for 80 separate trials, there is also the chance grouping of defendants.

The codefendants with whom a particular defendant is joined may well have a substantial effect on whether he or she is found guilty or acquitted. For example, those grouped with a well-known leader, who may therefore be personally unpopular with many of the jurors, will be at a distinct disadvantage compared with those who are not so grouped. The same will be true of student defendants grouped with non-student defendants, and of defendants who did not "go limp" grouped with those who did "go limp." The point is not whether the grouping of defendants

is arbitrary, but whether any purely chance element unnecessarily should be allowed to be introduced into this case. There are enough imponderables in any trial without unnecessarily manufacturing them.

B.

PRETRIAL HEARINGS TO EXPLORE THE POSSIBILITIES FOR ELIMINATION OF MOST OF THE PROSPECTIVE 80 TRIALS ARE REQUIRED TO ENSURE PUBLIC ACCESS TO UNCLOGGED COURTS FOR THE ADMINISTRATION OF JUSTICE IN OTHER PENDING AND FUTURE CASES.

No one, not even those segments of the community most outraged by defendants' conduct, can reasonably assert that this case does not present procedural problems of the greatest magnitude. Nor can anyone assert a legitimate public interest in having 80 separate protracted trials if fewer trials can be held consistent with due process.

Thus, apart from the prejudice to defendants that 80 trials will entail, exploratory pretrial hearings for the prupose of seeking acceptable ways of reducing the number of trials are required in the public interest.

Regardless of whether the defendants are innocent or not, the public interest is not served by their being found guilty in unfair trials.

C:

PRETRIAL HEARINGS TO EXPLORE THE POSSIBILITIES FOR ESTABLISHING WORKABLE PROCEDURES CONSISTENT WITH DUE PROCESS AND EQUAL PROTECTION OF THE LAWS ARE ESSENTIAL IN THIS CASE AND IN SIMILAR CASES THAT MAY ARISE IN THE FUTURE.

1. As officers of the Court and participants in the administration of justice, defense counsel recognize that their responsibility in a criminal case includes the just and proper administration of the system in which they have been trained and in which they play an important role.

The immediate portion of this memorandum is, in a real sense, an amicus curiae brief by defense counsel in this case. The so-called adversary approach to the solution of criminal cases slavishly ignores the realities of the problem at hand and also ignores the needs of the defendants. Why should lawyers cling to the practices of a dissimilar past, still dedicated to the idea that finding truth in a criminal case is a game played by way of contest and trial between lawyers?

What defense counsel seek as attorneys is justice and a fair trial for defendants. What they seek as officers of the Court is the sound administration of justice.

At least for the foreseeable future, civil disobedience by large numbers of persons concerning many different issues appears to be a dramatic if not major fact of life in our society. Given that fact, lawyers and judges must attempt ... means that, consistent with due process -- indeed because of due process -- will allow our criminal courts to handle cases such as this in an orderly manner without jeopardizing either the interests of the public in free access to our courts or the defendants' right to a fair trial.

2. The Court has power to order pretrial hearings in criminal cases.

a. The Court has statutory power to order pretrial hearings.

Code of Civil Procedure §128 provides in part:

> Every court shall have power:
>
> * * *
>
> 3. To provide for the orderly conduct of proceedings before it, or its officers;
>
> * * *
>
> 5. To control in furtherance of justice, the conduct of its ministerial officers, and of all other persons in any manner connected with a judicial proceeding before it, in every manner appertaining thereto;
>
> * * *

The provisions of the Code of Civil Procedure, when appropriate, apply to criminal proceedings. See, e.g., C.C.P. §§22, 24, 31. In any event, C.C.P. §128 applies to "every court" as a court, irrespective of the type of proceeding pending, and the section has been relied on in criminal cases. E.g., People v. Kerigan (1887) 73 C. 222, 14 P. 849.

Under that section, the Court clearly has power to grant pretrial hearings in this case.

b. The Court has inherent power to grant pretrial hearings.

As Federal District Judge Kaufman has observed, "the adaptation of pre-trial procedures to criminal cases is not a legislative problem, but one that must be met by the judiciary itself." Pre-trial in Criminal Cases, 23 Fed. Rules Dec. 551, 554 (1958). See also Preliminary Draft of Proposed Amendments to Rules of Criminal Procedure for the United States District Courts 11 (1962).

The functions of pretrial hearings in criminal cases are closely interwoven with those of pretrial criminal discovery. See Traynor, Ground Lost and Found in Criminal Discovery, 39 N.Y.U. L. Rev. 228, 236 (1964); Handbook of Recommended Procedures for the Trial of Protracted Cases, 25 Fed. Rules Dec. 351, 402 (1960). In this state, pretrial criminal discovery has developed entirely apart from statute. See generally Fletcher, Pretrial Discovery in State Criminal Cases, 12 Stan. L. Rev. 293 (1960); Louisell, Criminal Discovery: Dilemma Real or Apparent? 49 Calif. L. Rev. 56 (1961). Both pretrial hearings and pretrial criminal discovery are designed to reduce if not eliminate the game element in the administration of criminal justice. One ground for granting pretrial discovery to the prosecution -- in Jones v. Superior Court (1962) 58 C.2d 56, 22 C.R. 879 -- according to Chief Justice Traynor, who authored the majority opinion in that case, was that "a contrary decision . . . would not only have compelled resort to continuances with their attendant delays, but would have foreclosed the development in criminal cases of pretrial conferences, which in civil cases have served to limit and refine issues and to facilitate the settlement of cases." Traynor, Ground Lost and Found in Criminal Discovery, 39 N.Y.U. L. Rev. 228, 249 (1964). (Emphasis added.) It is clear that pretrial hearings in criminal cases not only are authorized but also are to be encouraged in appropriate cases.

3. Possible alternative trial plans.

To illustrate the need for further joint thinking on trial plans, four possible alternatives to 80 separate trials are noted:

(1) Since a defendant is not required to be present in a misdemeanor trial, it may prove feasible to have one joint trial at which different defendants are present at different times, as trial needs dictate. To make such a plan work, counsel for both the state and the defense could establish advance trial schedules that should be strictly followed.

(2) It might prove desirable after exploration of all the issues to agree to separate trials on separate issues, with the defendants grouped for fewer much larger trials according to the isolated issues.

(3) A representative trial might prove feasible, both the state and the defense agreeing to abide by the results. The number and selection of defendants who would stand trial could be determined by agreement to ensure that all relevant issues are present.

(4) It may prove desirable to stipulate to an agreed statement of facts, for one or a number of defendants, for purposes of a test case to determine the issues that all parties ultimately feel must be resolved.

These four possibilities are by no means exhaustive, and undoubtedly more suitable alternatives would emerge from candid imaginative discussions among defense counsel, counsel for the state, and the Court. Each of the suggestions, however, if feasible, would be preferable to 80 separate trials.

4. Other matters that should be considered in immediate pretrial hearings.

The possible issues and procedural problems that might have to be resolved in this case are seemingly unlimited. Defense counsel have no crystal ball to guide them, but the standard problems that usually arise in protracted cases are listed here as illustrative of matters that can and should be discussed as soon as possible in this case. The list is based on the proposed agenda for the first pretrial hearing in the Handbook of Recommended Procedures for the Trial of Protracted Cases, 25 Fed. Rules Dec. 351, 436 (1960):

(1) Appearance by attorneys.

(2) The possibility of naming one attorney as liaison counsel pend-

ing trial.(This means one attorney on whom notices, papers, etc., may be served for purposes of all defendants.)

(3) The factual and legal issues presented, including clarification of generalities in the complaints. (These are tentative, subject to later amendment, but specific enough to apprise the Court and all parties of the basic nature of the charge. Defendants' demurrers and the second part of this memorandum are, in effect, statements addressed to this point.)

(4) Consideration whether the case will be complex and protracted, making the special "big case" procedures desirable.

(5) The desirability of assigning the entire case to a single judge. (This is an essential element in the "big case" procedure.)

(6) Contemplated preliminary motions or defenses (a) questioning the jurisdiction of the Court, or (b) requiring a stay of the action. (Counsel are expected to discuss, in connection with these motions (i) the contested facts and law raised, (ii) the necessity of discovery with respect to fact issues, (iii) the desirability of a preliminary hearing on the motion or defense, and (iv) the possibility of interlocutory review.)

(7) Exploration of the issues raised by motions directed at the complaints.

(8) Contemplated special defenses.

(9) Proposed discovery and the desirability of postponing discovery until the issues are further defined and/or refined.

(10) Possible stipulations of fact.

(11) Settlement possibilities.

(12) A timetable for further procedures in the case.

5. The circumstances of this case call for exploration of new procedures: those suggested are unusual but not untested.

The value of pretrial proceedings in civil cases is well established in California. See generally Van Alstyne and Grossman, California Pretrial and Settlement Procedures (Cal. C.E.B. 1963). Apparently only two states - New Jersey and Missouri - have adopted formal rules for criminal pretrial hearings, but the federal judiciary has given extended

thought to the problems raised by large and protracted litigation, including criminal cases, which is summarized in the Handbook of Recommended Procedures for the Trial of Protracted Cases, 25 Fed. Rules Dec. 351 (1960). Enough experimentation with pretrial in actual cases has taken place to justify the conclusion that pretrial procedures can be made to work in the interests of justice in appropriate criminal cases. See, e.g., Kaufman, Pre-Trial in Criminal Cases, 42 J. Am. Jud. Society 150 (1959); Kaufman, The Apalachin Case: Further Observations on Pre-Trial in Criminal Cases, 44 J. Am. Jud. Society 53 (1960). See also Wessel, Procedural Safeguards for the Mass Conspiracy Trial, 48 A.B.A.J. 628 (1962).

Defense counsel cannot guarantee that pretrial hearings will solve all or any of the difficult problems facing the bench, bar, and community posed by the pending complaints, but they are confident that 80 separate trials will be a disaster to all concerned. Pretrial hearings offer sufficient promise of some positive accomplishment to justify that they be held.

II.

THE LEGAL AND FACTUAL ISSUES IN THIS CASE ARE SO COMPLEX THAT IT WILL BE IMPOSSIBLE TO PREPARE ADEQUATELY FOR 80 SEPARATE TRIALS AND IMPOSSIBLE FOR THOSE TRIALS TO BE HANDLED IN AN ORDERLY MANNER CONSISTENT WITH THE DUTIES OF BENCH AND BAR TO ENSURE PROPER ADMINISTRATION OF JUSTICE, UNLESS PRETRIAL HEARINGS ARE HELD.

Throughout this memorandum facts are frequently assumed to illustrate potential issues. All factual discussions, however stated, are merely assemptions for the purposes of this memorandum. But clearly, whatever the ultimate resolution of the issues raised, serious questions of law and fact are presented that should be resolved in a manner that will ensure to all defendants the same rights at trial.

Whenever a statute is to be applied to a situation that may not have been contemplated by the Legislature, "the danger is not that . . . [judges] will exceed their power, but that they will fall short of their obligation." Traynor, No Magic Words Could Do It Justice, 49 Calif. L. Rev. 615, 620 (1961). This danger is compounded when dealing with criminal statutes and conduct that has elicited little sympathy in substantial segments of the community. A heavy responsibility falls, then, on bench and bar to ensure that these defendants are convicted only if their conduct is proved to have been criminal, and not merely because it is proved to be unpopular.

The best way to ensure rational consideration of the issues is to discuss them candidly in pretrial hearings before any defendant is forced to stand trial. Pretrial will ensure that the resolution of legal issues raised at trial will be the same for all whether there is one or 80 trials.

A.

SERIOUS CONSTITUTIONAL QUESTIONS ARE RAISED BY APPLICATION OF PENAL CODE §§148, 409, AND 602(o) TO DEFENDANTS' CONDUCT.

The constitutional issues discussed in the memorandum in support of defendants' demurrer to the charges on their face are incorporated in this memorandum by reference and will not be repeated here. It

is important to note, however, that constitutional questions are raised by the application of charges in this case, and that frequently they overlap or are directly related to the nonconstitutional issues discussed here.

B.

THE DEFENDANTS' CONDUCT WAS EXTRALEGAL RATHER THAN ILLEGAL

1. Civil Disobedience can be extralegal rather than illegal.

A relatively understandable act, whether criminal or not, can be distorted and exaggerated until the public aim is vengeance rather than justice. This is a most pressing danger here because of confusion in the minds of many about the relation of civil disobedience to violation of law. Civil "disobedience" does not necessarily require that a criminal law be disobeyed.

There are two types of civil disobedience. The first is to deliberately violate a law that is found objectionable by those who disobey it. Necessarily, the act committed is illegal unless the law violated is itself invalid. In such cases, the only legal defenses possible are constitutional or technical in nature. The second type of civil disobedience is to commit a form of socially dramatic conduct to call attention to a grievance that may or may not relate to a law. The act of "disobedience" may or may not tangentially violate some law, but the originating dispute is not about that law. In this class of cases, therefore, it is not permissible to assume, merely because a person flouts accepted standards of social decorum, that he has thereby violated a criminal statute. The legality of the conduct must be tested independent of the dispute from which the conduct arose.

Clearly defendants' conduct falls in the second class. The dispute was not over the right of students to use Sproul Hall as a dormitory or meeting place.

To quote Chief Justice Traynor from another context. We cannot "forget that even the most carefully drafted and comprehensive statutes of one generation decline into the antiquated texts of the next, for they

can never anticipate the boundless capacity of seemingly well-regulated persons for startling entanglements. Unlike machines enigmatically advertised as automatic beyond belief, human beings continue to be impressively non-automatic, irrepressibly bursting the bounds of even the most far-reaching statutes." Traynor, No Magic Words Could Do It Justice, 49 Calif. L. Rev. 615, 617 (1961).

2. Defendants' conduct whether extralegal or illegal was not immoral.

A second preliminary issue should be disposed of before considering the merits of the statutory charges. The complexity of modern civilization requires extensive controls to permit masses of humans to live in close proximity. Inevitably there has been an intensification of the conflict between individual human freedoms and myriad governmental regulations. Many if not most regulations, whether they impose criminal penalties or not, are not concerned with moral issues. The commission or omission of the proscribed act raises no question of criminal potential in the defendant. If this is true of many "normal" criminal defendants, it is certainly true of these defendants who were attempting to raise moral questions they felt were important to the campus and the community.

This point has been recognized both by Governor Brown (as quoted in the Saturday Review of Literature, Jan. 16, 1965, p. 66) and by Acting Chancellor Meyerson (13 University Bulletin No. 21, p. 106, January 11, 1965).

The philosophical aspects of the problem are explored in Wasserstrom, The Obligation to Obey the Law, 10 U.C.L.A. L. Rev. 780 (1963), in which the author reaches these general conclusions: (1) Disobedience of the law seldom is entailed with revolutionary conduct; (2) illegal conduct in modern society does not necessarily establish the actor's immorality; (3) the choice for society between acceptance of reasoned disobedience and absolute submission to the law is not a choice between social order and anarchy; (4) morally justifiable disobedience to law is perfectly consistent with a democratic society — society's decision-making process does not eliminate the possible need for individual moral decisions in

concrete cases; and (5) absolute acceptance of a duty to obey the law would inhibit raising socially significant, and therefore essential, moral questions. An interesting study of the general problem of violation of a law in an entirely different area of human conduct is Packer & Campell, Therapeutic Abortion: A Problem in Law and Medicine, 11 Stan. L. Rev. 417 (1959).

C.

BESIDES SERIOUS CONSTITUTIONAL QUESTIONS RAISED BY APPLICATION OF PENAL CODE §602(o), ITS PROVISIONS ON THEIR FACE INDICATE THAT IT WAS NOT INTENDED TO APPLY TO SIT-INS. THERE IS ALSO SERIOUS DOUBT WHETHER THE UNIVERSITY OF CALIFORNIA IS A "PUBLIC AGENCY" AND WHETHER SIT-INS ARE NOT "LAWFUL BUSINESS" EITHER ON THE FACTS OR AS A MATTER OF LAW. THE VALIDITY OF THE SECTION'S APPLICATION, IN ANY EVENT, DEPENDS ON HOW EACH DEFENDANT WAS ASKED, WHO ASKED HIM, AND WHEN HE WAS ASKED TO LEAVE THE BUILDING.

Penal Code §602, as applicable here, provides:

> Every person who willfully commits any trespass by . . .:
> * * *
> (o) Refusing or failing to leave a public building of a public agency during those hours of the day or night when the building is regularly closed to the public upon being requested to do so by a regularly employed guard, watchman, or custodian of the public agency owning or maintaining the building or property, if the surrounding circumstances are such as to indicate to a reasonable man that such person has no apparent lawful business to pursue;
> is guilty of a misdemeanor.

The prosecution must establish beyond a reasonable doubt, therefore as to each defendant:

(1) That he refused or failed to leave;

(2) That Sproul Hall is a public building;

(3) That the University of California is a public agency;

(4) That the building was not regularly opened to the public at the time defendant refused or failed to leave;

(5) That he had been requested to leave by a regularly employed guard, watchman, or custodian of the public agency; and

(6) That the surrounding circumstances would have indicated to a reasonable man that defendants had no lawful business to pursue.

It is not alleged in Count I that the University of California is a public agency. See the memorandum in support of the demurrer.

Under the facts insofar as they are known to defense counsel without benefit of discovery, these legal and factual issues are raised by the trespass charge:

1. Is Penal Code §602(o) intended to apply to a sit-in case?

At the outset, it is worth noting that the only criminal trespass statute dealing expressly with the University of California excludes from its provisions any "officer, employee or student." Penal Code §558. It is, indeed, something of a paradox to consider students as trespassers on their own campus, particularly in view of the parental rights the University asserts over those under 21 years of age. Could a child be charged with trespass for refusing to leave his father's normally locked study or shop?

A close reading of §602(o) indicates, in any event, that its provisions were not designed to cover sit-in cases. (This is a different question from whether sit-in demonstrators may have "lawful business to pursue.") If §602(o) were intended to apply to sit-in cases, then it is curious that the Legislature was not more explicit and more comprehensive. For example, why do its provisions:

(1) Apply only to public buildings? Does civil disobedience occur only with respect to public institutions? Clearly as many if not far more sit-ins occur in private buildings that may or may not be open to the public.

(2) Apply only when the building is regularly closed? Does civil disobedience normally occur after hours? Clearly not.

(3) Require that a regularly employed guard, watchman, or custodian of the public agency request the defendant to leave? This is a peculiar form of riot act! Is the janitor usually the person expected to handle a large demonstration? Again, clearly not.

The reasonable conclusion is that the statute was enacted to make it easier for libraries and other similar institutions to handle those who do not wish to go out in the cold night air when the building is about to close. An argument could be made that even if the section's

purpose is focused elsewhere, it can be made to cover this case. But we are not dealing with a hoary enactment that must be bent to cover modern, unanticipated circumstances. This section was enacted at the last legislative session, in 1963, when the Legislature was well aware of the problems raised by sit-ins. Therefore, silence or ambiguity must be resolved in favor of defendants.

The legislative history of Penal Code §602(o) confirms this view. In its original version, A.B. 2411, Regular Session 1963, provided (in relevant part):

> Refusing or failing to leave a public building <u>or other property</u> of a public agency upon being requested to do so by a regularly employed guard, watchman, or custodian of the public agency owning or maintaining the building or property, if the surrounding circumstances are such as to indicate to a reasonable man that such person has no apparant lawful business to pursue, <u>or that the orderly conduct of public business demands such departure</u>;

constitutes a criminal trespass. The italicized words were deleted, and the limitation of the provision to when the building was regularly closed to the public was added, on June 6, 1963, when sit-ins were taking place in the Capital Building in support of passage of the Rumford Fair Housing Bill. Legislative intent to exclude sit-ins, therefore, is abundantly clear.

<u>2. Are the Regents a "public agency" within the meaning of Penal Code §602(o)</u>?

The memorandum in support of the demurrer indicates how the first Count I of the Complaint is uncertain, ambiguous, and indefinite, and how it fails to allege that Sproul Hall is a "public building of a public agency" and, if it is, of what "public agency."

Even if the Complaint is amended on its face, this Court can assume that Sproul Hall is owned by the Regents of the University of California. But are the Regents a "public agency" within the meaning of Penal Code §602(o)? Defendants assert that they are not.

Article IX, §9, of the California Constitution provides that "the University of California shall constitute a public trust" to be administered by the Regents "with full powers of organization and government, subject only to such legislative controls as may be necessary to ensure compliance with the terms of the endowments of the University, and the security of its funds."

This language clearly indicates that, apart from such legislation as may be necessary to protect the fiscal position of the University, the Legislature lacks powers of organization and government over the property of the Regents -- including Sproul Hall. Certainly a criminal statute such as §602(o) cannot be construed as one "necessary to ensure compliance with the terms of the endowments of the university, and the security of its funds."

In addition, while public agencies are variously defined throughout the codes (see, e.g., Corporations Code §10700; Government Code §§4401, 5301, 11000), when the Legislature wants to define a public corporation as a public body in a given piece of legislation, it does so specifically. E.g., Government Code §54000. The only reference to the University of California in connection with this problem appears to be in Government Code sections dealing with "state agencies." The only reference to the Regents appears to be in a notation in Government Code §§11012 and 11041, which make certain provisions otherwise applicable to "state agencies," not applicable to the Regents.

It is interesting to note, moreover, that when the Legislature desired to include the Regents in the term "public agency" it did so explicitly in Government Code §22550 (dealing with Federal Old Age and Survivors Insurance). Compare this section with the language used in Government Code §31478. Section 22550 appears to be the only direct legislative expression of when the Regents are to be considered a "public agency."

The only reference to the University of California in the Penal Code (except for the prohibition against sales of intoxicating liquor near the campus - Penal Code §172) is in a narrowly drawn trespass statute dealing only with the campus at La Jolla - Penal Code §558.

One of the earliest California cases on the subject, Lundy v. Delmas (1894) 104 C. 655, 38 P. 445, held that the Regents were not "public officers." This opinion was cited with approval in the more recent case of Caminetti v. Pacific Mut. Life Ins. Co. (1943) 22 C.2d 344, 360, 139 P.2d 908, 916. Consistent with this view, the courts have

held that University property may be held by the Regents for private as well as for public use and in such a case is subject to local taxation. City St. Improvement Co. v. Regents (1908) 153 C. 776, 96 P.801. The courts have also held that the Regents, and not the Legislature, determine such internal university affairs as vaccination of students (Williams v. Wheeler (1913) 23 C.A. 619, 138 P.937), and terms of employment of university personnel (Newmarker v. Regents (1958) 160 C.A.2d 640, 325 P.2d 558). In Williams and Newmarker there was a general statewide law on the subject at issue, but the Regent's regulations prevailed nonetheless. Tolman v. Underhill (1952) 39 C.2d 708, 249 P.2d 280, may seem to the contrary, but it is clear that there the legislative enactment prevailed only because the matters at issue (loyalty of state employees), were not "exclusively university affairs" (39 C.2d at 711, 249 P.2d at 282). See also Wallace v. Regents (1925) 75 C.A.274, 242 P.892. In the absence of a showing - or a pleading - that the dispute on the campus between students, faculty, and administration, and the "sit-in" at Sproul Hall that resulted from the dispute were not "exclusively university affairs," Penal Code §602(o), cannot be applied in this case.

The opinions of the California Attorney General also support this view. In 1943, the Legislature enacted a statute providing that "every department, board, commission, or office" submit to the State Personnel Board certain data, so that the Board could establish a "normal work week" for state employees. Upon request of the State Personnel Board, the Attorney General concluded that this legislation did not apply to the University of California or its employees. His reasoning was simple: He quoted the Constitution provision already quoted here, and said (2 Ops. Cal. Atty. Gen. 143, 144):

> This constitutional provision clearly vests in the Regents broad control over the administration and government of the University, closely limiting legislative control. Sec. 73.5 appears to have no relation either to endowments to the University or to the security of its funds. Nor does it appear to be within the proper scope of legislation that the courts have said (Wallace v. Regents, 75 C.A. 274, 278) may be enacted pursuant to the police power of the State for the general welfare of the public. Hence, if Sec. 73.5 were construed as applicable to employees of the University, it would in my opinion be contrary to the letter and spirit of the

Constitution. However, I find nothing in the section which compels such construction. It is to be presumed that the Legislature intended Sec. 73.5 to operate constitutionally. A statute will never be so construed as to violate the Constitution if it may reasonably be so construed as to render it constitutional.

We submit that to construe §602(o) as applicable to Sproul Hall - a building owned by the Regents - would be equally contrary to the letter and spirit of the Constitution. Such a construction would render §602(o) unconstitutional. On the other hand §602(o) may be construed to be constitutional (on this issue at least) by holding that the term "public agency" used there does not include the Regents of the University of California. We urge that the Court do so.

Another provision of the California Constitution (Article VI, §18) makes judges ineligible "to any other office or public employment" during their tenure of office. In response to a legislative request, the Attorney General concluded that this provision did not preclude a judge from being a Regent of the University of California, since a Regent was not the holder of an "office or public employment." The opinion stressed that the Board of Regents was incorporated as a <u>private</u> corporation, and that its members are <u>not</u> "public officers." 20 Ops. Cal. Atty. Gen. 229, 230.

If the Board as a whole is a private corporation, and if its members individually are not public officers, then its property (including Sproul Hall) is not the property of a "public agency," and §602(o) does not and cannot constitutionally be applied to it.

In still another opinion, the Attorney General reviewed many of the foregoing authorities and concluded (30 Ops. Cal. Atty. Gen. 162, 166):

> Only a few universities in the United States are organized in a manner similar to the University of California (3 Ops. Cal. Atty. Gen. 42, 43; 55 Mich. L. R. 728; Elliott and Chambers, The Colleges and the Courts, (1936) p. 250). The University of California is a state institution (Estate of Purington, 199 Cal. 661, 666; 3 Ops Cal. Atty. Gen. 108, 109). It is a constitutional corporation or department and constitutes a branch of the state government equal and coordinate with the legislature, the judiciary and the executive (Williams v. Wheeler, 23 Cal. App. 619, 622; 3 Ops Cal. Atty. Gen. 42; 3 Ops. Cal. Atty. Gen. 184, 185; 55 Mich. L. R. 728). <u>The Regents in operating the University are generally free of legislative interference and control</u> (3 Ops. Cal. Atty. Gen. 42; Op. of the Atty. Gen. No. 10428, issued December 26, 1935). The constitution expressly makes the Regents subject only to limited legisla-

tive control (Calif. Const., art. IX, §9). The Regents, not the legislature, have the general rule-making or policy-making power in regard to the University (Estate of Royer, 123 Cal. 614, 619; 1 Ops. Cal. Atty. Gen. 232, 235). In certain limited areas, such as compliance with endowments and security of funds, the legislature may control some operations of the University (Calif. Const., art. IX, §9; Wall v. Board of Regents, 38 Cal. App 2nd 698, 699; 3 Ops. Cal. Atty. Gen. 108, 3 Ops. Cal. Atty. Gen. 42, 43; see also, Hamilton v. Regents, 219 Cal. 663, 293 U.S. 245). General police regulations also may be made applicable to the University (Williams v. Wheeler, 23 Cal. App. 619, 623; Wallace v. Regents, 75 Cal. App. 274, 278; 2 Ops. Cal. Atty. Gen. 143; 20 Ops. Cal. Atty. Gen. 31, 34-36; Op. of Atty. Gen. No. 10428, dated December 26, 1935). It is clear, however, that the power of the Regents to operate, control, and administer the University is virtually exclusive. [Emphasis added.]

The only exceptions the Attorney General has recognized are those relating to the fiscal affairs of the University, not at issue here. 3 Ops. Cal. Atty. Gen. 108; 30 id. 185.

It is apparent, therefore, that the Regents are not a "public agency" within the meaning of Penal Code §602(o) and that Count I of the Complaint cannot be sustained.

3. Did the defendants, or any of them, have "lawful business to pursue"?

Whether defendants' business was "lawful" raises constitutional questions discussed elsewhere. The requirement that the defendants' business be unlawful clearly affords possible affirmative defense; indeed, it may indicate that the section was not intended to cover sit-ins. See Review of 1963 Code Legislation, 38 Cal. S.B.J. 745-746 (1963).

The 1963 Legislature must have been aware of the May 1962 Proposed Official Draft of the Model Penal Code. Section 221.2 of that code deals with criminal trespass. Subsection (3)(b) recognizes an affirmative defense when

> the premises were at the time open to members of the public and the actor complied with all lawful conditions imposed on access to or remaining in the premises;

The notes to the proposed Model Penal Code §221.2, state at p. 160:

> The affirmative defense provided in Subsection (3) in respect to premises open to the public parallels the conception of licensed entry which we have introduced in the burglary section .... In controversies such as have arisen in the "sit-in cases, the effect of the present proposal would be merely to make it explicitly an issue whether the conditions imposed on access to premises open to the public were "lawful." They might be unlawful by virtue of federal law relating to facilities of interstate transportation, statutory or common law requirements of non-discrimination in places to which the public resorts, or for other reason.

The comment is addressed to sit-ins in places of public accomodation, not in public buildings, but it is significant that if there are legitimate reasons why the affirmative defense in Penal Code §602(o) should not be available to sit-ins, the subsection would have been drafted quite differently. By its terms it applies only to an unlawful remaining, not entry. If sit-ins were not considered "lawful business" in public buildings then entry in public buildings for a sit-in would have been outlawed. At the very least, it would have been simple to add a proviso in §602(o) excluding large groups of persons who remain after hours to protest or call attention to an alleged grievance.

4. Can the terms of §602(o) be applied to those defendants who were not personally asked to leave the building until after 8 a.m., when the building was regularly open to the public?

This question is most difficult to discuss without discovery to determine exactly what happened. The point is that §602(o) requires a request when the building is regularly closed by certain prescribed persons. The statute implies that this be a personal request to leave, not a blanket request shouted at a crowd which may not be heard by some or all. If some defendants did not hear a "regularly employed guard, watchman, or custodian" ask them to leave during the night, assuming someone fitting that definition did ask some of the defendants, can they be charged when asked personally after 8 a.m. the following morning, during the hours when the building was regularly open to the public, even if it was closed to the public that particular morning because of the disturbance?

5. Did a "regularly employed guard, watchman, or custodian" of the University of California ask each defendant to leave?

This question also turns closely on what discovery will establish, but apparently most of those officers who were arresting and/or removing defendants from Sproul Hall were neither "regularly employed" guards, watchmen, or custodians, nor "regularly employed ...[by] the public agency."

Even assuming that a campus policeman did make a general request for all defendants to leave (and assuming a general request is sufficient for purposes of the statute) was he regularly employed to guard or watch Sproul Hall? The section would seem to assume that such a person make the request. Admittedly compliance with the statute would be difficult in this regard under the circumstances of this case, but that suggests that §602(o) is not applicable, not that its apparent intent should be bent to apply to this case.

D.

BESIDES SERIOUS CONSTITUTIONAL QUESTIONS RAISED BY ITS APPLICATION, THE PROVISIONS OF PENAL CODE §409 WERE INTENDED TO PROHIBIT ONLY THREATS OF VIOLENCE TO SOCIETY AND NOT NONVIOLENT ILLUMINATION OF MORAL QUESTIONS, HOWEVER THREATENING THOSE QUESTIONS MAY BE TO SOCIETY. DEFENDANTS' CONDUCT DID NOT CONSTITUTE AN "UNLAWFUL" ASSEMBLY; UNDER THE CHARGES,

THEIR ASSEMBLY MUST, AS A MATTER OF LAW, BE ASSUMED TO HAVE BEGUN IN A LAWFUL MANNER, AND ONLY IF ITS CHARACTER CHANGED TO THE EXTENT OF CONSTITUTING A THREAT TO PUBLIC PEACE CAN §409 APPLY. THE VALIDITY OF THE SECTION'S APPLICATION, IN ANY EVENT, DEPENDS ON WHO ASKED DEFENDANTS, COLLECTIVELY NOT INDIVIDUALLY, TO DISPERSE, AND HOW THEY WERE ASKED TO DISPERSE.

Penal Code §409 provides:

> Every person remaining present at the place of any riot, rout, or unlawful assembly, after the same has been lawfully warned to disperse, except public officers and persons assisting them in attempting to disperse the same, is guilty of a misdemeanor.

The complaints charge the defendants only with being at an unlawful assembly; they do not charge that defendants' collective conduct constituted either a riot or rout. Thus limited, the prosecution must prove beyond a reasonable doubt that each defendant

(1) Was at the place of an unlawful assembly;

(2) Was lawfully warned to disperse; and

(3) Remained present at the unlawful assembly thereafter.

In addition, the prosecution must establish beyond a reasonable doubt that the defendants' conduct collectively constituted an unlawful assembly.

<u>No defendant is individually charged with having participated in an unlawful assembly</u>.

Under the facts insofar as they are known to counsel without benefit of discovery, these legal and factual issues are raised by the refusal to disperse charge.

<u>1. Does Penal Code §409 apply to sit-in cases?</u>

Penal Code §409 must be viewed in its context, Title 11, Part 1, of the Penal Code, entitled "Crimes Against the Public Peace." All sections quoted below were enacted together as part of the 1872 code, and all (except §409 itself, which comes immediately from the Field Code) are direct descendants of the Tenth Division of the Crimes and Punishment Act of 1850, Stats. 1850, ch. 99, §229, pp. 243-244. They must, therefore, be construed together, as frontier statutes, designed for situations where violence often if not usually implied guns.

The sections pertinent here, dealing with breaches of the public peace, are, going further into history, descendants of English Law. Penal Code §§404 (defining riot), 406 (defining rout), and 407 (defining unlawful assembly) are codifications of the same English common law crimes. Penal Code §409, on the other hand, is related to the 1715 Riot Act. Comment, 23 Calif. L. Rev. 180, 183-184 (1935). The statutory crimes relating to riot, which are the antecedents of Penal Code §409, were directed at conduct that may be fairly characterized as "state crimes." See Model Penal Code. Tentative Draft No. 13, p. 18 (1961).

Given the legislative background of both this State and England, it is highly questionable whether the provisions of Penal Code §409 can be applied to this case, for its provisions should be confined to genuine threats of violence to society, and not to the raising of moral issues, however threatening they may appear to society.

The riot provisions have been applied in modern times to mass picketing (e.g., People v. Montoya (1936) 17 C.A.2d 547, 62 P.2d 383; People v. Spear (1939) 32 C.A.2d 165, 89 P.2d 445), and the unlawful assembly and disturbing the peace provisions have been applied to mass political meetings (e.g., People v. Anderson (1931) 117 C.A.Supp. 763, 1 P.2d 64), but these sections have apparently never been applied to a nonviolent demonstration that was not causing a serious public disturbance. Compare Rees v. Palm Springs (1961) 188 C.A.2d 339, 10 C.R. 386.

2. Did defendants' collective conduct constitute an unlawful assembly?

a. Statutory preconditions to an "unlawful" assembly.

Putting aside the constitutional questions raised by the concept of an unlawful assembly, which are discussed elsewhere, it seems clear that the statutory requirements for Penal Code §409 have not been met.

Penal Code §407 defines unlawful assembly:

> Whenever two or more persons assemble together to do an unlawful act, and separate without doing or advancing toward it, or do a lawful act in a violent, boisterous, or tumultuous manner, such assembly is an unlawful assembly. [Enacted 1872. Based on Stats. 1850, ch. 99, §115, p. 243, which did not cover the second definition.]

There are, thus, two quite different kinds of assemblies of two or more persons that may be "unlawful": (1) Those where the persons intend to do an unlawful act but do not attempt to do it; and (2) those where they gather for a lawful act but their conduct becomes such as to constitute a breach of the peace. Assuming defendants were ordered to disperse and failed to do so, their conduct cannot fall under the provision of the first part of §407. Indeed, Penal Code §409 is inconsistent with the first class of "unlawful" assembly. That offense, when committed, falls under Penal Code §416, discussed below, which prohibits a refusal to disperse when assembled for the purpose of an unlawful act.

The first class was covered by the 1850 act. The second was added by the 1872 code. But the proper construction of Penal Code §§407 and 409 requires notice of other sections enacted with them in 1872.

b. Related Penal Code provisions enacted with Penal Code §409.

(1) "Riot."

Penal Code §404 defines riot:

> Any use of force or violence, disturbing the public peace, or any threat to use such force or violence, if accompanied by immediate power of execution, by two or more persons acting together, and without authority of law, is a riot. [Enacted 1872. Based on Stats. 1850, ch. 99, §116, p. 243, as amended by Stats. 1855, ch. 82, §3, p. 106.]

A riot thus requires two or more persons acting together without lawful authority and either (1) actual force or violence that disturbs the public peace; or (2) a substantial threat of force or violence that presumably disturbs the public peace.

(2) "Rout."

Penal Code §406 defines rout:

> Whenever two or more persons, assembled and acting together, make any attempt or advance toward the commission of an act which would be a riot if actually committed, such assembly is a rout. [Enacted 1872. Based on Stats. 1850, ch. 99, §116, p. 243, as amended by Stats. 1855, ch. 82, §3, p. 106.]

Essentially a rout is an attempted riot. By incorporation a threat to public peace is required. It is hard, however, to imagine realistic situations in which an attempted riot that breached the peace would not in fact be a riot as defined by §404. This is probably the reason

why §406 has seldom if ever been used. There is no reported opinion concerning a criminal charge under it.

(3) Disturbing the peace.

Penal Code §415 covers diverse specifically condemned conduct that allegedly disturbs the peace. In pertinent part it provides:

> Every person who maliciously and willfully disturbs the peace or quiet of any neighborhood or person, by loud or unusual noise, or by tumultuous or offensive conduct ... is guilty of a misdemeanor .... [Enacted 1872. Based on Stats. 1850, ch. 99, §112, p. 243.]

While §415 has been frequently amended since 1872, the portion quoted was part of the 1872 version. That portion covers conduct that need not affect the public or even take place in public. See People v. Vaughn (1944) 65 C.A.2d Supp. 844, 150 P.2d 964 (Jehovah's Witnesses forcing their message on residents of a hotel.) It covers conduct by an individual that is similar to that covered by the second part of Penal Code §407.

(4) Assembling to disturb the public peace.

Penal Code §416 provides:

> If two or more persons assemble for the purpose of disturbing the public peace, or committing any unlawful act, and do not disperse on being desired or commanded so to do by a public officer, the persons offending are severally guilty of a misdemeanor. [Enacted 1872. Based on Stats. 1850, ch. 99, §113, p. 243.]

The elements of this crime are: (1) two or more persons assembled; (2) a purpose of disturbing the peace or of committing an unlawful act; (3) a request by a public officer to disperse; and (4) a failure to disperse thereafter.

Penal Code §416 differs from the first part of Penal Code §407 in that the participants do not separate voluntarily without fulfilling their purpose, but are requested to disperse and fail to do so. It covers the situation one step beyond that covered by Penal Code §407, but short of an attempt (i.e., "rout"), covered by Penal Code §406.

Penal Code §416 differs from the second part of Penal Code §407 in that the gathering under §416 must be for the purpose of disturbing the peace or commission of an unlawful act, whereas under §407, the assembly

is gathered for a lawful purpose, but becomes violent, etc., thereafter. See People v. Kerrick (1927) 86 C.A.542, 261 P.756. Moreover, while a preconceived intent to disturb the peace or commit an unlawful act is required under §416, that intent need not be carried out to satisfy the requirements of that section. Under the second part of §407, on the other hand, there must be conduct beyond the lawful assembly itself that disturbs the peace.

c. Defendants' conduct did not constitute a breach of public peace and therefore did not constitute an "unlawful" assembly.

(1) Defendants' conduct was admittedly lawful when they assembled, and it must be proved that their conduct became thereafter so violent, boisterous, or tumultuous that it disturbed the public peace.

Considering the terms of Penal Code §§407, 409, and 416 together, it is clear that the defendants are individually charged with having been present at a violent, boisterous, or tumultuous assembly which, though it began lawfully, changed its character and breached the public peace. The prosecution must prove that defendants' conduct collectively was so violent, boisterous, or tumultuous that it breached the public peace. This question is largely factual, but the import of defendants' actual conduct before their arrests may also raise legal questions. The prosecution must also prove that defendants' collective conduct, which was lawful to begin with, changed its character to become different conduct, which breached the public peace, since mere passage of time cannot convert peaceful conduct into violent conduct. In any event, there is a serious legal question whether there could have been a disturbance of the public peace, irrespective of defendants' conduct.

(2) A breach of public peace requires a "public" which is threatened and terrorized by a threat of violence.

All the Penal Code sections noted above relate to "Crimes Against the Public Peace" and, with the exception of the individual conduct proscribed by Penal Code §415, deal with "public peace." Penal Code §§404 (riot) and 416 (refusal to disperse) are confined to breaches of the public peace by their terms. Penal Code §407 (unlawful assembly) has been construed to apply only to breaches of public peace. People v.

Kerrick (1927) 86 C.A.542, 261 P.756. Kerrick, the only case that has seriously construed the substantive meaning of §407, also established some guidelines that are crucial here.

In Kerrick, defendants were charged with murder, tried jointly, and convicted of manslaughter. The deceased was killed during a drunken party in a private home. The prosecution theory was that the brawl was an unlawful assembly under §407, and therefore all defendants were engaged in an unlawful act and were jointly responsible for the homicide. The Attorney General in effect confessed error on this point, but the court commented on the nature of the offense described under §407 for purposes of retrial (86 C.A. at 551, 261 P. at 759):

> Not every meeting where violent, boisterous, and tumultuous conduct occurs may be denominated an unlawful assembly, even though that be the wording of the statute. It is particularly dangerous in a country where meetings are constantly held for every conceivable purpose, many of them accompanied with much noise and excitement, to lay down such a doctrine. At this time of year [i.e., November] in our country in almost every hamlet, and certainly in every city of any size, contests between the youth of schools and colleges are being staged which could not be characterized as anything other than violent, boisterous, and tumultuous. Yet the communities are not alarmed and the public peace is not endangered. No one would for a moment characterize high school or college football games as unlawful assemblies. The statute was intended to prevent "any tumultuous disturbance of the public peace by" two or more persons "having no avowed, ostensible, legal or constitutional object, assembled under such circumstances, and deporting themselves as to produce danger to the public peace and tranquility, and which excites terror, alarm and consternation in the neighborhood." (In re Charge to Grand Jury, 4 Pa. L. J. 29.) The jury should consider, as we read again in Wharton's Criminal Law, section 1851, "In determining the question of terror, . . .whether rational and firm men, in charge of families, would have, under the circumstances, cause for anxiety; and in testing this it is necessary to take into account the hour at which the parties meet, the language used by them, and the acts done."

Obviously it is impossible to claim as a matter of law that defendants' conduct was analogous to a football game, but it is interesting that the court in Kerrick should call to mind student activities when illustrating excluded conduct. Certainly pantie raids are more violent, boisterous, and tumultuous than the immediate sit-in. No one could claim that, in terms of the safety of their persons and property, the householders of Berkeley were terrorized either by past pantie raids or football rallies or by the present dispute. In brief, the "public peace" was not breached.

The acts did not even take place in the public. No persons were terrorized or made anxious for their person, homes, or stores. Only those members of the public who were curious enough to seek out the demonstration could even view or hear it directly. Certainly Penal Code §407 cannot be held satisfied by what is seen or heard the next day as news on TV or radio. The acts took place away from the homes, shops, etc., of anyone whose peace could be disturbed unless they were rubbernecking. See Connell v. Clark (1948) 88 C.A.2d 941, 200 P.2d 26 (beating "in a lonely spot" not a disturbance of public peace, at least for purposes of avoiding liability under an insurance policy).

Putting the case most strongly in favor of the prosecution, defendants' conduct took place in a public building, but not in the "public"; public officials and citizens may have been outraged, but not terrorized; and the public was morally challenged, but not by violence. Under these circumstances, Penal Code §409 does not apply; if it does, it is unconstitutional.

3. Were defendants "lawfully warned to disperse"?

Penal Code §409 does not specify how the crowd is lawfully ordered to disperse. People v. Sklar (1930) 111 C.A. Supp. 776, 292 P. 1068, held that this gap was filled by Penal Code §726, which provides:

> Where any number of persons, whether armed or not, are unlawfully riotously assembled, the sheriff of the county and his deputies, the officials governing the town or city, or the judges of the justice courts and constables thereof, or any of them, must go among the persons assembled, or as near to them as possible, and command them, in the name of the people of the state, immediately to disperse. [Enacted 1872. Based on Stats. 1851, ch. 29, §40, p. 216; Stats. 1850, ch. 119, §43, p. 278.]

(This section, also enacted in 1872, indicates that riots and unlawful assemblies were assumed to be violent matters.)

Sklar held that §726 was our equivalent to the English procedure of "reading the riot act." People v. Anderson (1931) 117 C.A. Supp. 763, 1 P.2d 64, held that §726 did not have to be complied with when dispersing an assembly under Penal Code §416, noting that Penal Code §409 applies to nonparticipants and to meetings for lawful purposes, whereas §416 applies to participants assembled for an unlawful purpose. The Legislature amended §726 in 1951, thus indicating that the section is not a dead letter.

Since Penal Code §416, in contrast to §726, authorizes any "public officer" to order the participants to disperse, it seems doubtful that Chancellor Strong's well-publicized demand that the defendants disperse satisfied the requirements of §726 (and therefore Penal Code §409), unless he can qualify as an official of the "governing town or city." Whether anyone else ordered defendants to leave is a factual question, but Sklar holds that the demand must be a general demand. Thus, unless someone qualified under §726 generally ordered all the defendants leave, their remaining in the building was not unlawful under Penal Code §409.

Again, discovery is required to determine who, if anyone, ordered the defendants to disperse.

E.

BESIDES SERIOUS CONSTITUTIONAL QUESTIONS RAISED BY APPLICATION OF PENAL CODE §148, ITS PROVISIONS DO NOT APPLY TO DEFENDANTS' CONDUCT. AS A MATTER OF LAW, DEFENDANTS DID NOT RESIST THEIR ARRESTS, SINCE THEY DID NOT IN ANY WAY PREVENT THEIR BEING TAKEN INTO CUSTODY. THE CHARGE UNDER §148 MUST THEREFORE RELATE TO THEIR REMOVAL FROM THE BUILDING, IN WHICH CASE IF THE CHARGE UNDER EITHER PENAL CODE §602(o) (REFUSAL TO LEAVE) OR PENAL CODE §409 (REFUSAL TO DISPERSE FROM THE BUILDING) ARE UPHELD, THEIR PUNISHMENT IS OTHERWISE "PRESCRIBED" AND §148 CANNOT APPLY; IF NEITHER CHARGE UNDER PENAL CODE §§602(o) AND 409 IS UPHELD, OR IF FOR ANY OTHER REASON DEFENDANTS' ARRESTS AND REMOVAL WERE NOT PURSUANT TO LAW, THEN DEFENDANTS WERE LEGALLY ENTITLED TO RESIST THEIR ARRESTS AND REMOVAL PASSIVELY.

Penal Code §148 provides:

> Every person who wilfully resists, delays, or obstructs any public officer, in the discharge or attempt to discharge any duty of his office, when no other punishment is prescribed, is punishable by a fine not exceeding one thousand dollars, or by imprisonment in a county jail not exceeding one year, or by both such fine and imprisonment.

The prosecution must establish beyond a reasonable doubt, therefore, as to each defendant charged under Count III:

(1) That he resisted, delayed, or obstructed a person in some action;

(2) That the person was a public officer; and

(3) That the action was in the discharge of or attempt to discharge a duty of the officer's office.

In addition, the prosecution must establish beyond a reasonable doubt that no other punishment is prescribed for the conduct of those defendants charged under Count III. <u>This element is not alleged in Count III</u>.

For immediate purposes, in the absence of discovery, it is assumed that all those charged under Penal Code §148 went "limp" when informed that they were under arrest or were to be arrested, and that is what distinguishes them from those defendants not charged under §148. With this assumption, these legal and factual issues are raised by the resistance, delaying, and obstruction charge:

1. What "duty" were the officers attempting to discharge?

A threshold problem is to determine which duty or duties defendants are alleged to have been resisting, delaying or obstructing. There appear to be only two duties that could be relied on by the prosecution. Defendants may be charged with resisting, delaying, or obstructing their arrests, their removal from the building, or both their arrest and their removal.

As a matter of law, it is submitted, there was no resistance to arrest, and press releases by arresting officials indicate that it was the problem of removal that concerned them. In any event, the issues under both possible duties are noted below.

2. Did defendants resist, delay, or obstruct their arrests?

The California cases construing Penal Code §148 shed virtually no light on the problem whether "going limp" is a violation of that section. The only case in which resistence to arrest by means other than violence was involved to any substantial extent is People v. Wilson (1964) 224 C.A.2d 738, 37 C.R. 42, but there defendant when told he was under arrest, jumped from the car and ran into his father's house. The deputy followed and tried to get him to come back. Defendant would not do so and "started wanting to fight." The deputy went back to his car to get handcuffs. When he returned, defendant threatened him with a rifle. Defendant was originally prosecuted under Penal Code §417 (exhibiting a firearm in a threatening manner), but that charge was dismissed. The question was whether that dismissal barred prosecution under §148. The court held it did not, for two reasons: (1) The second prosecution was not for the "same act," since the first prosecution was based on merely one incident, while the second was based on the entire course of conduct; and (2) the conduct of defendant, after he was placed under arrest but before he obtained the rifle, constituted a violation of §148. The court did not analyze or explain what the violation under §148 consisted of but besides locking the door and refusing to open it, flight was involved, and there is a suggestion that some violence or threat of violence may also have occurred.

In People v. Manriquez (1934) 138 C.A. 614, 33 P.2d 36, the defendant hung onto doors and the like to impede officers who were attempting to drag him from his home, but the case turned on the lawfulness of the arrest, not on whether defendant's acts constituted resistance.

No California case found sheds any light on the meaning of the words "delays" and "obstructs" as used in §148, which suggests that the three words are to be considered shaded variations of the same conduct: actively preventing in some manner the performance of an officer's duty.

The only case found in any jurisdiction that actually involved going limp is People v. Knight (Magis. Ct. 1962) 228 N.Y.S.2d 981, which held it a jury question whether under a statute quite similar to California's defendant resisted, delayed, or obstructed an officer under these facts: The officer, after warning defendant twice to move out of the street, put his hand on defendant's shoulder and told him he was under arrest. Defendant pulled the officer's hand from his shoulder, ran into the crowd on the sidewalk, lay down on the sidewalk, and refused to move. Officers had to carry him to the police wagon.

Knight clearly has no bearing on the issues in this case, because defendant did more than go limp when placed under arrest. He broke loose from the officer's hold and impeded the officer's custody over him. The difference between Knight and the instant case may be found in the basis of the startling fact that apparantly no going-limp case has been reported from the South, although it is common knowledge that civil rights demonstrators go limp as standard procedure when placed under arrest. The apparent reason is that arrested persons go limp to make absolutely clear to the Southern officers that they are not resisting arrest. Any action other than absolute immobility could be construed as resistance.

Defendants here did nothing. They did not attempt to disengage themselves, flee, argue, etc. They simply remained in a seated or prone position, and submitted to the arresting officer's assertion of authority. "An arrest is taking a person into custody, in a case and in the manner authorized by law." Penal Code §834. Since defendants did

nothing affecting their custody by going limp, it is impossible to charge them with resisting, delaying, or obstructing their arrest under Penal Code §148.

This conclusion is clearly in line with the trend of modern thinking on the subject of arrest. Section 242.1 of the Proposed Official Draft of the Model Penal Code 213 (1962) provides:

> A person commits a misdemeanor if he purposely obstructs, impairs or perverts the administration of law or other governmental function by force, violence, physical interference or obstacle, breach of official duty, or any other unlawful act, except that this Section does not apply to flight by a person charged with crime, refusal to submit to arrest, failure to perform a legal duty other than an official duty, or any other means of avoiding compliance with law without interference with governmental functions.

The exceptions in this proposed law are designed "to prevent an overly broad application" of its general terms. Specifically for present purposes, it was intended not

> to make it criminal to flee arrest. The adequate social measure for this is to authorize the police to pursue and use force necessary to arrest. If the arrest is effected, prosecution can be had for the original offense. If, as is very often the case, the arrested person is innocent or cannot be proved guilty of the offense for which he was arrested, it would be unjust and conducive to grave abuse to permit prosecution for an unsuccessful effort to evade the police.

Model Penal Code, Tentative Draft No. 8, pp. 128 - 129 (1958).

Section 242.2 of the Proposed Official Draft of the Model Penal Code 213-214 (1962), which is directly analogous to Penal Code §148, provides:

> A person commits a misdemeanor if, for purpose of preventing a public servant from effecting a lawful arrest or discharging any other duty, the person creates a substantial risk of bodily harm to the public servant or anyone else, or employs means justifying or requiring substantial force to overcome the resistance.

Section 242.2 was added

> to confine the offense [resistance to arrest] to forcible resistance that involves some substantial danger to the person. The policy . . . extends to minor scuffling not unusual in arrest. The limitation is not explicit in current legislation, and the law is in some confusion.

Model Penal Code, Tentative Draft No. 8, p. 129 (1958).

Under the Model Penal Code, going limp would clearly not be a violation. The policy considerations stated here are the same as those behind Penal Code §834a, enacted in 1957, discussed in the next point.

3. Is there a duty to cooperate with an arresting officer besides refraining from challenging his custody?

Only if the prosecution can prove a duty on the part of a person who is placed under arrest to cooperate actively in being taken to jail, can any charge relating to arrest under Penal Code §148 be substantiated here. There is no such duty under the law.

Penal Code §834a provides:

> If a person has knowledge, or by the exercise of reasonable care, should have knowledge, that he is being arrested by a peace officer, it is the duty of such person to refrain from using force or any weapon to resist such arrest. [Added by Stats. 1957, p. 3807.]

Had the legislature desired to impose a positive duty on the person being arrested to go where the officer tells him to go, it easily could have, and doubtless would have, used language conveying that intention. Instead it imposed only a duty to refrain from using force or a weapon. That duty is obviously not violated by going limp. See also People v. Murphy (1933) 130 C.A. 408, 20 P.2d 63, in which a man named Nathan was arrested for intoxication, peacefully submitted to his arrest and accompanied the officer to the call box where the officer summoned assistance. The officer was struck unconscious by Murphy, and Nathan left. The court held that Nathan did not commit an escape, because while the officer was unconscious he had no effective control over Nathan, and Nathan had no duty to remain and wait for him to regain consciousness.

The conclusion that Penal Code §834a defines the boundaries of a citizen's duty when under arrest is supported by the fact that §834a was part of a comprehensive restatement and revision of the law of arrest. Thus, the Senate Judiciary Committee reported:

> The District Attorneys Association explained the purpose of AB 1857, as introduced, as follows:
>
> > This bill seeks to amend the Penal Code sections on arrest -- to make them reflect the law of arrest as declared and interpreted by the appellate courts in California -- and to incorporate parts of the Uniform Arrest Act, with the intention that the statutory law of California shall be a true, accurate and concise guide to the substantive rights and duties of peace officers and citizens alike, and the procedural steps to be followed in the exercise of these rights and duties.
>
> Senate Journal, Regular Session 1957, Appendix p. 427.

The only case found on §834a is People v. Burns (1961) 198 C.A.2d Supp. 839, 18 C. R. 921. It involved a conviction under §148 and the question on appeal was whether the trial court erred in refusing to instruct that there is a right to resist unlawful arrest, using no more than reasonable force, and in instructing instead in the language of §834a. The court held that §834a applied to unlawful arrests, and that it is constitutional. This clearly was the intent of the provision, which is part of the Uniform Arrest Act. See the discussion of Warner, The Uniform Arrest Act, 28 Va. L. Rev. 315 (1942), who was reporter for the drafting committee.

The same conclusion is reached by applying the policy considerations behind §§242.1 and 242.2 of the Proposed Official Draft of the Model Penal Code (1962), quoted above. If a person is not chargeable for attempting to escape, then he owes no duty of cooperation, short of refraining from use of resistance that raises a threat of bodily harm. Is it a crime to walk more slowly than the arresting officer likes, or to fail to run, if the officer is in a hurry? In the final analysis, is it a crime to refuse to walk to the gas chamber? (It might be argued that an assertion of the inertia of one's body is a force or weapon. This may be sound physics, but it is an impossible construction of a criminal statute.)

4. Is any other punishment prescribed?

The 1850 predecessor of Penal Code §148 applied specifically to misconduct related to service of process. Stats. 1850, Crimes and Punishments Act §92, p. 240. The 1860 amendment extended the 1850 act to cover similar misconduct related to arrests. Stats. 1860, p. 125. The 1872 code converted the provision to a backstop statute. Thus, when another statute covers specific conduct, that statute governs, not §148.

If defendants are charged with resisting, delaying, or obstructing the duty of officers to clear the building, but either the trespass charge under Count I or the refusal to disperse charge under Count II is upheld, then the punishment for defendants' conduct is otherwise prescribed.

Putting aside the possible effect of Chancellor Strong's request to disperse, the officers that ordered the defendants to disperse, under Penal Code §409, or to leave the building, under Penal Code §602(o), were necessarily the same officers, collectively considered, who removed them. If defendants had left the building as ordered or requested, there would have been no resistance, delay, or obstruction to the clearing of the building.

Apparently those defendants who did not go limp were not charged under Penal Code §148; yet, in terms of the substantive offenses alleged in Counts I and II, they equally resisted, delayed or obstructed the officers' duty to clear the building. The form of the resistance, delay, or obstruction differed between the two classes of defendants (those charged under Count III and those not so charged), but the nature and effect of their conduct was essentially the same. In either case, resistance, delay, or obstruction was an inherent part of the offense of refusing to disperse or leave the building. The mere fact that one form of conduct may have been more inconvenient to the police is not a valid basis for charging some defendants under §148 since the punishment for refusal to leave or disperse is prescribed by Penal Code §602(o) or §409.

5. Were defendants' arrests unlawful?

If defendants' arrests were for any reason unlawful, there can be no conviction under Penal Code §148 for two reasons: (1) the right that existed before 1957 to resist an unlawful arrest has not been abolished. It has simply been pared down by removing from it the right to resist by means of force or weapons. The right to resist by other means remains. (2) Conviction under §148 cannot be predicated on resistance to an unlawful arrest (even if the resistance was itself unlawful, because one essential element of §148 cannot then be satisfied.

(1) The right to resist unlawful arrest without force has not been abolished.

Citizens had a right to make reasonable resistance to an unlawful arrest prior to 1957. See Jackson v. Superior Court (1950) 98 C.A.2d 183,,

219 P.2d 879; People v. Perry (1947) 79 C.A.2d Supp. 906, 180 P.2d 465; People v. Craig (1907) 152 C. 42, 91 P. 997; People v. Bradley (1913) 23 C.A.44, 136 P. 955; People v. Denby (1895) 108 C.54, 40 P. 1051. This was expressly conceded by the opinion in People v. Burns (1961) 198 C.A.2d Supp. 839, 18 C.R. 921, which held that the preexisting right to resist by force was abolished by Penal Code §834a.

In People v. Manriquez (1934) 138 C.A. 614, 33 P.2d 36, defendant was arrested outdoors and brought into the house. He allegedly threatened to get a gun and shoot the officers, which was impossible because the officers gave him no opportunity. He took hold of a flatiron, which the officers immediately took away from him. He hung onto doors and everything he could get hold of when the officers attempted to take him from the house, and the officers had to take him out by main force. It was held that the evidence did not sustain a conviction under §148 when the arrest he was protesting and resisting was unlawful.

If there is a right to resist an unlawful arrest by force, there must a fortiori be a right to resist one without force. The right to resist unlawful arrest before 1957 consisted of two elements: the right to do so by force and the right to do so without force. Thus, §834a, if constitutional, strikes down the first element but leaves the second standing. "Only insofar as force is concerned, the section abolishes the right to resist unlawful arrest. . . ." Selected 1957 Code Legislation, 32 Cal. S.B.J. 609-610 (1957). The explanation by the District Attorneys Association of why §834a was proposed (see Senate Judiciary Committee Report 435-436) and the explanation of Uniform Arrest Act §5 (see 28 Va. L. Rev. 315, 330) show that the purpose of the measure was to eliminate the type of resistance that can result in death or serious injury to the officer. Indeed, the whole argument is based on the assumption that no other kind of resistance is relevant under modern conditions. Since the officer is armed and instructed to overcome resistance, he cannot effectively be resisted by anything less than deadly force.

It is plain, as a matter of language, that if there was a preexisting right to resist unlawful arrest by means other than force or weapons, §834a cannot be reasonably construed as affecting it.

(2) A §148 prosecution cannot be predicated on resistance to an unlawful arrest, even if the resistance was itself unlawful.

"Manifestly this section requires, in order to constitute the offense, four elements: (1) wilfulness, (2) resistance, delay or obstruction of (3) a public officer, and (4) some official duty which the officer is then discharging or attempting to discharge." People v. Perry (1947) 79 C.A.2d Supp. 906, 907, 180 P.2d 465, 466. The prosecution has the burden of proof on all four.

"The conviction cannot be upheld unless it appears that the arrest . . . was lawful; for if it was unlawful, manifestly no official duty was being discharged in making it." 79 C.A.2d Supp. at 908, 180 P.2d at 466.

"By the express terms of the charge, the obstruction must have been to the making of a lawful arrest, else the offense was not committed. An officer is under no duty to make an unlawful arrest." Jackson v. Superior Court (1950) 98 C.A.2d 183, 189, 219 P.2d 879, 883.

Thus, when an arrest is unlawful, even resistance forbidden by §834a could not be prosecuted under §148, but would have to be charged as some other offense, such as assault and battery.

It may be noted that in a §148 case the burden is on the prosecution to prove that the arrest was lawful. No presumption that an official duty has been regularly performed, that the law has been obeyed by the officer, and that he is not guilty of the crime of unlawful arrest, can be applied in this situation. People v. Perry, supra, 79 C.A.2d Supp. at 913, 180 P.2d at 470.

6. Was defendants' removal lawful?

a. If defendants' removal was unlawful, their passive resistance to their removal was not proscribed by Penal Code §148.

Most of the cases construing Penal Code §148 concern arrest. The reasoning of the immediately preceding discussion, however, applies

equally, if not more so, to any duty to remove defendants from the building. There is no statute like Penal Code §834a outlawing the use of force or weapons in resisting, delaying, or obstructing public officers in the performance of duties other than arrest. Even if there were, it would not outlaw passive resistance, delay, or obstruction. Thus, even if it could be argued that §834a defines a duty with respect to any conduct subject to §148, the present charge cannot be upheld under §148 if defendants' removal was not lawful.

b. If neither the trespass nor the refusal to disperse charge is upheld then defendants' removal was unlawful and no charge founded on passive resistance can be supported by Penal Code §148.

7. Were the procedural prerequisites to defendants' removal observed?

When dispersing an assembly, the procedures prescribed should be meticulously followed, because the very nature of breaking up an assembly raises constitutional questions. This necessity is particularly compelling if the assembly presented no clear and present danger of injuring person or property.

a. Statutory preconditions.

The provisions of Penal Code §726 have already been quoted. For present purposes it is important to note that §726 requires "the sheriff of the county and his deputies, the officials governing the town or city, or the judges of the justice courts and constables thereof" to, in effect, read the riot act to those unlawfully or riotously assembled. Penal Code §727 then provides:

> If the persons assembled do not immediately disperse, such magistrates and officers must arrest them, and to that end may command the aid of all persons present or within the county.

b. Unanswered questions.

(1) Do the procedures outlined cover the trespass charges as well as the refusal to disperse charges?

The statutes just quoted clearly apply to the refusal to disperse charges under Count II. The statutes do not expressly apply to a case of simple trespass. It is submitted, however, that the trespass concept

does not contemplate by its terms a mass movement, under Penal Code §602(o) or otherwise. Penal Code §§726 and 727 are designed for dealing with mass situations; thus, even if Penal Code §602(o) is not held inapplicable to defendants' conduct, it nevertheless seems reasonable to conclude that for purposes of removing a mass trespass it must be treated under the dispersion procedures appropriate for riots and unlawful assemblies.

(2) Was the person who ordered the arrests under Penal Code §727 a person qualified under Penal Code §726?

Penal Code §727 does not authorize anyone to call in peace officers or citizens to disperse an unlawful assembly. Only those persons qualified to order the assembly to disperse under Penal Code §726 may do so. Indeed, a fair reading of the §727 indicates that the very same individual who ordered the dispersion must also order the arrests.

(3) Were defendants ordered to disperse?

Penal Code §726 requires that the designated officials "command" those present to disperse. The complaint, however, only alleges that they were "warned" to disperse. If defendants were not ordered to disperse, then their subsequent arrest cannot be lawful. People v. Sklar (1930) 111 C.A. Supp. 776, 292 P. 1068.

8. Were the arresting and/or removing officers "public officers"?

a. For purposes of the trespass charge are off-campus police "public officers"?

The campus police are peace officers for purposes of the campus. Education Code §23501. While the terms of that statute do not expressly so indicate, the University Bulletin 50 (1964-65), states that the campus police have

> sole responsibility for the enforcement of state and federal law on the University campus, and its police jurisdiction extends one mile beyond the exterior boundary of the campus and in or about other grounds and properties of the University of California . . . .

If the campus police in fact have exclusive or primary jurisdiction on campus (at least for alleged crimes that arise out of and are related to campus activities and functions) then the other peace officers that engaged in the removal and arrests may have acted in a private not a

public capacity. See People v. Martin (1964) 225 A.C.A. 125, 36 C.R. 924 (arrest by Los Angeles city police outside city limits, though within the county, must be tested as a citizen's arrest). See also People v. Alvarado (1962) 208 C.A.2d 629, 25 C.R. 437.

b. For purposes of the refusal to disperse charge, are off-campus police "persons [i.e., citizens] present or within the county," and not "public officers"?

As already indicated, when "any number of persons, whether armed or not, are unlawfully riotously assembled," they must be ordered to disperse under Penal Code §726. Penal Code §727 then provides that those who ordered their dispersion under §726 "must arrest them, and to that end may command the aid of all persons present or within the county." (Emphasis added.) What more logical group could be summoned by the campus police than other peace officers within the county? For purposes of §727, then, the off-campus police may not be public officers.

c. Can any officer from outside the county qualify as a "public officer" in view of the terms of Penal Code §727?

It is not known how many officers were from outside the county, but there apparently were at least some highway patrolmen who were not from Alameda.

d. Can any officer who failed to display a badge while allegedly performing his duty be a "public officer"?

It is not clear how many officers failed to display their badges, but it is apparent that some, particularly those engaged in removing defendants from the building, did not display their badges.

F.

UNDER ALL THREE CHARGES, DEFENDANTS' PURPOSES ARE RELEVANT. PRETRIAL HEARINGS ARE ESSENTIAL TO DETERMINE HOW BEST, CONSISTENT WITH A FAIR TRIAL, TO PRESENT EVIDENCE OF THEIR PURPOSES WITHOUT UNDULY DELAYING ONE OR EIGHTY TRIALS, AND TO ENSURE THAT RULINGS ON ADMISSIBILITY OF EVIDENCE OF PURPOSE WILL BE UNIFORM IF THERE IS MORE THAN ONE TRIAL.

Crimes are rarely committed without cause. The "truth" to be determined by a criminal proceeding, therefore, can never depend solely on the facts presented by the prosecution. The relationship of the defendant to those facts is also a part of the truth. Too often truth is seen only from the standpoint of the accuser, in which case justice and truth become synonymous with conviction.

1. Defendants' purposes have a direct relevance to the issue of whether they were in pursuit of "lawful business" as used in Penal Code §602(o).

Assuming that defendants are held to stand trial on the trespass charge, an affirmative defense to that charge is that their business was "lawful." That issue depends on their purposes.

2. Defendants' purposes have direct relevance under Penal Code §409 to the issue whether in fact their assembly was "unlawful."

As noted above, defendants are not charged with participation in an unlawful assembly, but their collective conduct must be shown to have constituted an unlawful assembly for the charge under Penal Code §409 to be sustained. It is clear, therefore, and particularly in view of the constitutional questions latent in the charge, that defendants' purposes have a direct bearing on whether the prerequisite of Penal Code §409 -- an unlawful assembly -- existed.

3. Defendants' reasons for "going limp" have a direct relevance to the issue whether they resisted, delayed, or obstructed a public officer in the performance of his duty.

As already suggested, going limp at the outset of the arrests was an ambiguous act. In addition, the arrests of all defendants took a number of hours to complete; during that time many things happened that could well have motivated some defendants to go limp entirely apart from

the issue of their removal from the building. It is fruitless to speculate on this matter before further preparation. The point is that purpose may well have direct bearing on the charges under Penal Code §148.

4. The manner of proving purpose should be as economical and brief as possible consistent with a fair presentation to the trier of fact.

If purpose is relevant to any charge, it will be relevant to the charges against most if not all defendants. A serious problem which should be settled before trial, is how to ensure that the presentation of evidence on purpose is both effective and expeditious.

5. How and under what circumstances purpose is relevant to all charges should be determined in advance of any trials to ensure uniformity in rulings, if more than one trial is held.

The issue of purpose was one of the key factors determining whether the defendants in the San Francisco sit-in cases were acquitted or convicted. The relevance of that issue to the present charges should not depend on which judge tries a particular case, assuming there is more than one trial.

G.

EVEN IF ONE OR MORE OF THE CHARGES AGAINST THE DEFENDANTS CAN BE APPLIED TO ANY OR ALL OF THEM, THEY CAN BE PUNISHED ONLY ONCE.

Penal Code §654 provides in part:

> An act or omission which is made punishable in different ways by different provisions of this code may be punished under either of such provisions, but in no case can it be punished under more than one. . . .

Where two offenses are such that one is necessarily included in the commission of the other, only one punishment is allowed. People v. Knowles (1950) 35 C.2d 175, 217 P.2d 1. A broad transactional test is used. People v. Branch (1953) 119 C.A.2d 490, 495, 260 P.2d 27, 31. In applying the transactional test, the Supreme Court, in Neal v. State (1960) 55 C.2d 11, 19, 9 C.R. 607, 611, adopted this rule:

> Whether a course of criminal conduct is divisible and therefore gives rise to more than one act within the meaning of section 654 depends on the intent and objective of the actor. If all of the offenses were incidental to one objective, the defendant may be punished for any of such offenses but not for more than one.

It is clear, that the trespass and refusal to disperse charges both relate to the same conduct. It is also apparently true that going limp was recommended in advance before entering the building if arrests took place. Assuming that is so, then the transaction test of Neal must be applied to the charge under §148 as well. For an excellent discussion of this problem as it relates to the problem of multiple trials, see Comment, 10 U.C.L.A. L. Rev. 870, 883 (1963).

H.

IN THE INTERESTS OF JUSTICE, BEFORE DEFENDANTS CAN PARTICIPATE IN PRETRIAL HEARINGS THEY MUST BE ADVISED OF ALL POSSIBLE CHARGES THAT THE PROSECUTION MAY SEEK TO ESTABLISH BECAUSE OF THEIR CONDUCT.

One of the most fruitful possibilities of pretrial proceedings is the elimination of pointless factual disputes. But before defense counsel can determine what facts can or should be admitted, they must be advised of all possible charges that might be filed as a consequence of defendants' conduct. This is essential not only for candid and open discussion of the facts, but also in the interests of the administration of justice, for if there are other possible charges, they should be disposed of in this case to avoid the possibility of future trials on other charges.

I.

A NUMBER OF ISSUES RELATING TO FAILURES TO FOLLOW PRESCRIBED STANDARDS OF LAW ENFORCEMENT MAY BE IMPORTANT.

The nature of the case posed a serious practical challenge to all concerned, and defense counsel is not presently prepared to evaluate all possible legal consequences of what was done. Nevertheless it is apparent that serious questions of proper law enforcement procedures, -- e.g., the right to make a phone call, and the right to be advised of the right to counsel before making statements -- will likely arise. These could profitably be explored in pretrial hearings.

CONCLUSION

For the foregoing reasons -- in the interests of justice, in the public interest in preserving free access to the court, in the interests of the administration of justice, and in view of the magnitude and complexity of the legal and factual issues raised by the charges -- pretrial hearings should be held in this case.

Respectfully submitted,

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Defendants for purposes of the
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Appendix A: Proposed Order Calling Preliminary Pretrial Conference

IN THE MUNICIPAL COURT FOR THE BERKELEY-ALBANY JUDICIAL DISTRICT

COUNTY OF ALAMEDA, STATE OF CALIFORNIA

People of the State of California)	
)	Cr. Nos. 7468 through 7547
)	
v.)	Order Calling Preliminary Pretrial Conference
)	
)	
Mario Savio, et. al.,)	
Defendants.)	

The complaints in these cases have been studied and it appears that the cases may develop into a protracted case. Therefore, IT IS ORDERED that:

1. The cases are consolidated for purposes of pretrial hearings.

2. A preliminary pretrial conference is set at _____ _____, for _____m., on _____, 1965. Each party shall be represented at the conference by the attorney or attorneys who are expected to conduct the trial for that party.

3. Unless otherwise determined at the pretrial conference, the conference shall be informal without court reporter in attendance. Attorneys for each party shall be prepared to discuss the matters set forth in the attached agenda.

Dated: January , 1965.

_____
Judge

Appendix B: Proposed Agenda For Preliminary Pre-Trial Conference

1. Appearance by attorneys for respective parties

2. The possibility of naming one attorney as liaison counsel pending trial.

3. The fact and law issues presented by the action, including clarification of generalities in the complaints.

4. Consideration whether the case will be complex and protracted so as to make special "big case" procedures desirable.

The following matters will be discussed unless the Court concludes that the case should be handled in accordance with ordinary practice:

5. The desirability of assigning the entire case to single judge.

6. Pending pleadings questioning the jurisdiction of the Court over the subject matter of the action. Counsel will be expected to discuss (i) the contested fact and law issues involved, (ii) the necessity of any discovery with respect to the fact issues, (iii) the desirability of a preliminary hearing, and (iv) the possibility of interlocutory review.

7. Presently contemplated special defenses. If any is contemplated or proposed, counsel will be expected to discuss (i) the contested fact and law issues involved, (ii) the necessity of discovery with respect to any fact issues, (iii) the possibility and desirability of disposing of the defense before trial, (iv) the desirability of separate trial of the issues raised by the defense, and (v) the possibility of an interlocutory review.

8. Discovery proposed and the desirability of staying discovery pending disposition of matters arising under items 6 or pending further clarification of the main issues of the case.

9. Possible stipulations of fact.

10. Possibilities of settlement.

11. Time table for further proceedings in the case.

IN THE MUNICIPAL COURT FOR THE BERKELEY-ALBANY JUDICIAL DISTRICT

COUNTY OF ALAMEDA, STATE OF CALIFORNIA

People of the State of California)	
)	Cr. Nos. 7468 through 7547
)	
v.)	DEMURRER
)	
)	
Mario Savio, et. al.,)	
Defendants.)	

To the Honorable Rupert Crittenden, Judge of this Court:

Defendants in these cases demur to Counts I and II, and when charged, Count III of the Complaints on the grounds (1) that the facts stated in each count fail to state a public offense and (2) that this Court has no jurisdiction of the offense charged in each count, for the following reasons:

A. The statutes on their face and as applied deprive all persons, including these defendants, of liberty without due process of law, contrary to California Constitution Article I, §13 and the United States Constitution, Amendment Fourteen,

and

B. They deny defendants the equal protection of the law contrary to the California Constitution Article I, §§11 and 21 and the United States Constitution, Amendment Fourteen,

in that:

1.They are arbitrary and capricious;

2.They are vague and unconfined, and fail to give persons, including defendants herein, fair notice of what is prohibited.

C. The statutes on their face and as applied deprive all persons, including these defendants, of the liberties guaranteed by the California Constitution, Article I, §§1, 9, and 10, and by the United States Constitution, Amendments One and Fourteen, in that:

1.They authorize infringement of freedom of speech, press, assembly and petition for redress of grievances;

2.They constitute prior restraints on the exercise of freedom of speech, press, assembly and petition for a redress of grievances;

.3. They authorize sharp curtailment of the academic freedoms essential to these defendants and to society as a whole, specifically contrary to the intention of California Constitution, Article IX, §1.

In addition Defendants demur to Count I on the grounds that it fails to state a public offense, and that this Court has no jurisdiction of the offense charged because (1) the Complaint fails to allege, and (2) as a matter of law, the Regents of the University of California are not, a public agency within the meaning of Penal Code §602(o).

In addition, those Defendants charged demur to Count III on the grounds that it fails to state a public offense, and this Court has no jurisdiction of the offense charged because (1) the Complaint fails to allege that there is no other punishment prescribed by law for the conduct charged under Penal Code §148, and (2) as a matter of law a punishment is otherwise prescribed.

This demurrer is based on the files in these cases, the provisions of Penal Code §1004, and the memorandum filed together with and in support of this demurrer.

Dated: January 26, 1965.

Malcolm Burnstein

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Joseph Landisman

Norman Leonard

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Attorneys specially appearing for Defendants for purposes of filing this demurrer

IN THE MUNICIPAL COURT FOR THE BERKELEY-ALBANY JUDICIAL DISTRICT

COUNTY OF ALAMEDA, STATE OF CALIFORNIA

The People of the State of California v. Mario Savio, et. al., Defendants.	Cr. Nos. 7468 through 7547 MEMORANDUM IN SUPPORT OF DEMURRER

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The demurrer in these cases must be sustained for two basic constitutional reasons:

(1) "A statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of due process of law", Lanzetta v. New Jersey, 306 U.S. 451;

(2) "The Fourteenth Amendment does not permit a State to make criminal the peaceful expression of unpopular views", Edwards v. South Carolina (1963) 372 U.S. 229, 237,

and for two specific defects in counts I and III of the Complaints, (discussed below).

I. THE CONSTITUTIONAL PROBLEM GENERALLY

The cases before this Court are both unique and highly typical.

They are unique because this is probably the first time in American history that a University has asked for police to arrest and carry out of a University building 779 students engaged in a peaceful demonstration against a University ruling on freedom of expression.

Yet they are typical of the cases now crowding the courts, north and south, many of which have reached and been decided by the United States Supreme Court. These are cases in which groups of young people -- from 2 to 2000 -- march or parade, sit-down or sit-in, clap, sing, talk, and sign petitions, make speeches in public parks, public buildings, in restaurants and hotels, on public streets, and outside courthouses, in order to achieve their concept of freedom. They are arrested and charged with violating misdemeanor statutes (or local ordinances).

In all of these cases, there are four elements to consider:

(1)danger to democracy if persons are arrested for exercising protected First Amendment liberties;

(2)danger to the public peace if the demonstrators commit violent acts;

(3)danger to the public peace if observers of the demonstrators commit violent acts on the demonstrators;

(4)problems in the enforcement of the statute, order, or regulation which the demonstrators are protesting, or under which their protest is threatened with legal restraint, in the face of a possible change in public opinion as a result of the demonstration.

Interestingly, the United States Supreme Court has found no instances of dangers to the public peace from the actions of the demonstrators themselves in the current series of "sit-in" cases. Where the courts have found dangers to the public peace from the reactions of observers who disagree with the demonstrators, the highest court has consistently held that it is the demonstrators who are to be protected, because it is they who are exercising First Amendment liberties not to be abridged by the government.

And frequently the statute, ordinance, court order, or regulation which was being protested, or which was being used to break up the demonstration, has proved to be unconstitutional, unwise, or subject to reinterpretation, modification or abolition.

One of the sharpest illustrations of this problem in constitutional law is the decision of the United States Supreme Court in Cox v. Louisiana (Oct. Term 1964, ##24 and 8), handed down one week ago, Jan. 18, 1965. The facts bear repeating here:

On Dec. 14, 1961, 23 Negro students picketing stores maintaining segregated lunch counters were arrested and taken to jail. On Dec. 15, Rev. B. Elton Cox, a Congregational minister and field secretary of CORE, led a group of 2,000 students in a protest parade through the streets of Baton Rouge to the courthouse during business hours. The students received permission for the demonstration to take place across the street from the courthouse from the police officials present. The demonstration did obstruct the sidewalk but was orderly. On Dec. 16, Rev. Cox was arrested and charged with violating Louisiana statutes forbidding disturbing the peace, obstructing public passages, and picketing before a courthouse. He was convicted and sentenced to four months in jail and fined $200.00 for disturbing the peace, five months and $500.00 for parading and assembling in the street, and one year and

$500.00 for picketing the courthouse. The Louisiana Supreme Court upheld the convictions.

The United States Supreme Court reversed all three convictions last week: (1) The Court unanimously held that the breach of peace statute, as interpreted by the Louisiana Supreme Court, was unconstitutionally broad in scope because it placed limitations on the exercise of First Amendment liberties. (2) The Court, 7 to 2, found that the statute prohibiting all street assemblies and parades had been enforced selectively by Baton Rouge officials, and held that the "unfettered discretion" they exercised was an "unwarranted abridgement" of the defendants' freedom of speech and assembly, even though the sidewalk had been obstructed. (3) The Court, 5 to 4, found that the police had given permission for the demonstration across from the courthouse, even though it had later been revoked, and held that the demonstrators were justified in tending to rely on this administrative interpretation of how "near" the courthouse a demonstration could lawfully take place.

The Cox decision is the latest in a series of Supreme Court reversals of state court convictions of civil rights demonstrators charged with misdemeanors similar to those charged against the 780 students now before this Court.

> Edwards v. South Carolina (1963) 372 U.S. 229, 83 S.Ct. 680 -- 187 demonstrators marched into statehouse grounds, sang, stamped feet, clapped hands in face of 200-300 bystanders; arrested; no violence.
>
> Fields v. South Carolina (1963) 374 U.S. 44, 84 S.Ct. 149 -- 1,000 persons paraded through main business area without a permit, blocked traffic, and refused to disperse on request of police; 349 arrested; no violence.
>
> City of Rock Hill v. Henry 375 U.S. 6, 84 S.Ct. 44 (1963); 376 U.S. 776, 84 S.Ct. 1042 (1964) -- 65 demonstrators sang patriotic songs in boisterous manner in front of City Hall in presence of large antagonistic crowd so that City work disrupted; no violence.

The case before this Court may fall into the constitutional focus of the Cox, Edwards, Fields, and Henry decisions most easily through a brief summary of the applicable law and of the facts now before this Court, followed by a series of definitions of the crucial concepts, and a brief analysis of the unconstitutional features of the three code sections, under which these defendants were charged, on their face and as applied here.

II. THE CONSTITUTIONAL FOCUS

This demurrer must be sustained because the facts stated in each count fail to state a public offense and this Court has no jurisdiction of the offenses charged in each count for the following reasons:

A. The statutes on their face and as applied deprive all persons, including these defendants, of liberty without due process of law, contrary to Article I, §13 of the California Constitution and the Fourteenth Amendment to the United States Constitution,

and

B. They deny defendants the equal protection of the law contrary to Article I, §§11 and 21 of the California Constitution and the Fourteenth Amendment to the United States Constitution,

in that:

1. They are arbitrary and capricious;

2. They are vague and unconfined, and fail to give persons, including defendants herein, fair notice of what is prohibited.

> A statute, it has been said, which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of due process of law. See Connally v. General Const. Co. (1926) 269 U.S. 385; Lanzetta v. Jersey, 306 U.S. 451; United States v. Cardiff (1952) 344 U.S. 174; In re Newbern, 53 C.2d 786, 3 Cal.Rptr. 364; People v. McCaughan, 49 C.2d 409, 317 P.2d 974; Winters v. New York, 333 U.S. 507; Champlin Refining Co. v. Corporation Commission of Okla., 286 U.S. 210; People v. Saad, 105 C.A. 2d Supp. 851, 234 P.2d 785; and Katzev v. Los Angeles, 52 C.2d 360, 341 P.2d 310.

C. The statutes on their face and as applied deprive all persons, including these defendants, of the liberties guaranteed by Article I, §§1, 9, and 10 of the California Constitution, and by the First and Fourteenth Amendments to the United States Constitution, in that:

1. They authorize infringement of freedom of speech, press, assembly and petition for redress of grievances;

2. They constitute prior restraints on the exercise of freedom of speech, press, assembly and petition for a redress of grievances;

3. They authorize sharp curtailment of the academic freedoms essential to these defendants and to society as a whole, specifically contrary to the intention of California Constitution, Article IX, §1.

In 1963, the United States Supreme Court described a "classic" example of the exercise of First Amendment liberties which is almost on all fours with the instant case: "The petitioners felt aggrieved by laws of South Carolina which allegedly 'prohibited Negro privileges in this State.' They peaceably assembled at the site of the State Government and there peaceably expressed their grievances 'to the citizens of South Carolina, along with the Legislative Bodies of South Carolina.' Not until they were told by police officials that they must disperse on pain of arrest did they do more. Even then, they but sang patriotic and religious songs after one of their leaders had delivered a 'religious harangue.'" Edwards v. South Carolina (1963) 372 U.S. 229, 235-6.

The Court concluded that "the circumstances in this case reflect an exercise of these basic constitutional rights in their most pristine and classic form", and held that: "it is clear to us that in arresting, convicting, and punishing the petitioners under the circumstances disclosed by this record, South Carolina infringed the petitioners' constitutionally protected rights of free speech, free assembly, and freedom to petition for redress of their grievances.

"It has long been established that these First Amendment freedoms are protected by the Fourteenth Amendment from invasion by the States. Gitlow v. New York, 268 U.S. 652, 45 S.Ct. 625; Whitney v. California, 274 U.S. 357, 47 S.Ct. 641; Stromberg v. California, 283 U.S. 359, 51 S.Ct. 532; DeJonge v. Oregon, 299 U.S. 353, 57 S.Ct. 255; Cantwell v. Connecticut, 310 U.S. 296, 60 S.Ct. 900." 372 U.S., 235.

In a series of cases the Court has established additional principles for determining the constitutionality of statutes impinging on the exercise of First Amendment liberties:

a. There is a presumption in favor of liberties guaranteed by the First Amendment. U.S. v. Carolene Products Co. (1938) 304 U.S. 144, 152-3 n.4.

b. Where there is a claim of overbreadth and vagueness, the court may take into account the operation of the provisions of the statute as to factual situations other than the one at bar, and

c. Where a provision includes both valid and invalid restrictions on free speech, the provision is void in its entirety, regardless of whether the particular conduct before the court could be constitutionally regulated.

See Terminiello v. Chicago, 337 U.S. 1; Fort v. Civil Service Commission of the County of Alameda, 61 A.C. 329, 38 Cal. Rptr. 625; Baggett v. Bullitt (1964) 377 U.S. 360; N.A.A.C.P. v. Button (1963) 371 U.S. 415; Shelton v. Tucker (1960) 364 U.S. 479; Talley v. California (1960) 362 U.S. 60; Thornhill v. Alabama (1940) 310 U.S. 88; Smith v. California (1960) 361 U.S. 147; Cramp v. Board of Public Instruction (1961) 368 U.S. 278; Cantwell v. Connecticut, 310 U.S. 296; and New York Times and Abernathy v. Sullivan (1964) 376 U.S. 254.

d. Even the prevention of violence is no justification for the enactment of statutes denying constitutionally-protected rights. Lawful, constitutionally-guaranteed conduct is protected even though it is likely to provoke a breach of the peace by others.

In Buchanan v. Warley (1917) 245 U.S. 60, a segregation ordinance of the city of Louisville, Kentucky, declared its purpose was "to prevent conflict and ill feeling between the white and colored races . . . and to preserve the public peace . . ." The Supreme Court held the statute unconstitutional as a violation of due process and equal protection:

> ". . . important as is the preservation of peace, this aim cannot be accomplished by laws or ordinances which deny rights created or protected by the Federal Constitution." (at p. 81)

In the Little Rock School Board case, Cooper v. Aaron (1958) 358 U.S. 1, the Court reiterated this view in the face of widespread disorder and acts of violence:

> "The constitutional rights of respondents are not to be sacrificed or yielded to the violence and disorder which have followed upon the actions of the governor and the Legislature." (at p. 16)

And see Terminiello v. Chicago (1949) 337 U.S. 1, 4-6; Hague v. CIO (1939) 307 U.S. 496, 516.

III. THE FACTS

Over 1,000 citizens, most of them students at the University of California- Berkeley campus, felt aggrieved by University rules regulating the content of student speech, assembly and petition on the campus. They peaceably assembled at the site of the University Administration, Sproul Hall, at 2 p.m. on Wednesday, December 2, 1964, and there peaceably expressed their grievances to the Administration by entering the building as an announced act of civil disobedience and non-violent protest. They remained peaceably assembled in the building until approximately 3 a.m. Thursday, December 3. Not until they were told by the Chancellor and a police officer to disperse on pain of arrest did any of them do more. Even then, all that happened is that some of them but went limp. 779 were arrested and charged with violating two or three sections of the Penal Code: (1) trespass, Penal Code §602(o); (2) unlawful assembly, Penal Code §409; (3) resisting arrest, Penal Code §148. Thereafter the University rules were modified.

IV. THE CRUCIAL CONCEPTS DEFINED

A. Citizens and Their Liberties

The defendants are citizens of the United States residing in the State of California and are entitled to exercise the liberties set forth in the First Amendment to the federal Constitution and in Article I of the state Constitution free from governmental interference.

United States Constitution, Amendment One:

> Congress shall make no law . . . abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

California Constitution, Art. 1 §1:

> All men are by nature free and independent, and have certain inalienable rights, among which are those of enjoying and defending life and liberty; . . .

Art. 1 §9:

> Every citizen may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of that right; and no law shall be passed to restrain or abridge the liberty of speech or of the press . . .

Art. 1 §10:

The people shall have the right to freely assemble together to consult for the common good, to instruct their representatives, and to petition the Legislature for redress of grievances.

The First Amendment prohibition against "Congress" making any laws abridging freedom of speech has been held to include Congress, state legislatures (through incorporation of the First Amendment liberties in the Fourteenth Amendment), the courts, and administrative agencies. See Baggett v. Bullitt (1964) 377 U.S. 360.

The freedoms protected by the First Amendment, and by the similar state provisions, may be exercised in a robust manner, "for speech concerning public affairs is more than self-expression; it is the essence of self-government. The First and Fourteenth Amendments embody our 'profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials.' New York Times Co. v. Sullivan, 376 U.S. 254, at 270." Garrison v. Louisiana, 85 S.Ct. 209, 216 (Nov. 23, 1964).

The First Amendment is called the "free speech" amendment. Within its compass come many acts which are not simply speech, but which communicate ideas. Our constitutional concepts today define "speech" to include walking on a picket line with numerous others, and carrying banners, so long as the walking is peaceful. Thornhill v. Alabama (1940) 310 U.S. 88. Clapping hands, stamping feet, and singing songs outside a government building are also included. Edwards v. South Carolina (1963) 372 U.S. 229.

Assembling peaceably to petition for a redress of grievances now constitutionally includes sitting-in, peacefully, to demonstrate against a policy, not just writing a petition on a piece of paper and getting signatures thereon. As the new acting Chancellor is reported to have said, The Boston Tea Party was one form of petition for a redress of grievances.

Governor Brown in 1961 expressed surprise at the dearth of cases concerning the right to petition, noting that "the legal limits of 'proper' petitioning are unclear, and there are some doubts even as to basic principles." Brown, The Right to Petition: Political or Legal Freedom? 8 U.C.L.A. L. Rev. 729, 731 (1961). Governor Brown concluded, however, that the state right to petition, "like the federal right, comprehends the entire spectrum of government and not merely the legislature." (at 732); that "petitioning is something more [than mere speech]. It supplements free speech, writing, and publication by imposing a special duty: to hear" (at 733).

Since 1961, several cases have reached the United States Supreme Court in which the defendants petitioned for a redress of grievances by means of "something more than mere speech", and the decisions clear away many doubts about this liberty. See Edwards v. South Carolina (1963) 372 U.S. 229, discussed supra.

B. Students and Academic Freedom

It may be helpful to keep in mind that the students who were arrested at Berkeley are not common criminals. They were engaged in protest, that is, they were communicating a series of grievances to the administration of the University. They were protesting limitations upon their right to peaceably advocate certain ideas about racial discrimination by local businesses and in the South, and freedom from restrictions on the content of speech by the University administration. They were seeking, to put it broadly, education in democracy and democracy in education.

Did these students have a right to engage in the type of advocacy and protest they chose? The answer must be in the affirmative. Students are not only students, but they are citizens. As citizens, they clearly enjoy the liberties of free speech, press, assembly, and petition guaranteed to them by the provisions of the state and federal Constitutions quoted abov Moreover, the students enjoy such rights, either as an aspect of the broad field of academic freedom or as an aspect of the fundamental right to learn.

Students in a state tax-supported institution enjoy more than mere privileges. They have rights, rights which flow from the constitutional provisions dealing with education.

California Constitution, Art. 9:

> §1. A general diffusion of knowledge and intelligence being essential to the preservation of the rights and liberties of the people, the Legislature shall encourage by all suitable means the promotion of intellectual, scientific, moral, and agricultural improvement.

Mr. Chief Justice Warren placed this principle very sharply for the United States Supreme Court: "Teachers and students must always remain free to inquire, to study and to evaluate, to gain new maturity and understanding; otherwise our civilization will stagnate and die." Sweezy v. New Hampshire, 354 U.S.234, 250, 77 S.Ct.1203, 1212, 1 L.Ed.2d 1311. See also, Meyer v. Nebraska, 262 U.S.390, 43 S.Ct.625, 67 L.Ed. 1042.

C. Defendants' Knowledge of Applicable Law

Most of the defendants here are students born after the United States Supreme Court held that picketing is a form of free speech (Thornhill v. Alabama (1940) 310 U.S.88), decided after the violent strikes and sit-downs in the union organizing days of the 1930's. In their high school years they heard their elders decry the conformism, the lack of independent political action on the college campuses. Buckley v. Meng (Spec. Term 1962) 230 NYS 2d 924. Since 1954 they have watched school officials in the South betray the desegregation principles the United States Supreme Court enunciated in Brown v. Board of Education (1954) 349 U.S.294.

In 1960, while most of these defendants were in high school, they heard about the demonstrations against the House UnAmerican Activities Committee in San Francisco, that the charges against the 64 arrested students were dismissed, and that the one student charged with a felony won his case. Last spring these students heard about or participated in the San Francisco mass sit-ins -- and also heard about the victories achieved -- the agreement with the hotel managers' association and the automobile dealers' association, as well as the arrests and ultimate acquittals, hung juries, and convictions. Last summer they watched their fellow students, Negro and white, work to change the face of the closed Mississippi society. Some defendants joined these students in Mississippi, and others raised money in Berkeley to further the movement. Now, finally, they have heard their elders praise the students for taking the lead in the difficult struggle in Mississippi.

D. Civil Disobedience and Nonviolent Protest

If it be granted that the students were exercising constitutional and legal liberties, in what manner did they exercise those liberties? Fundamentally, the form of the protest, the form of the communication, was by the "sit-in". Is this form of "sit-in" outside the purview of constitutional protection? Do the First Amendment and due process provisions of the Constitution exclude the "sit-in" as a means of exercising the guarantees contained in those provisions? Clearly not.

The "sit-in" movement began as a movement of protest, mainly by Negro youth. It spread rapidly through the South, and even to some places in the North, manifesting itself as well in kneel-ins, stand-ins, wade-ins and other forms of nonviolent resistance or civil disobedience to segregation.

The philosophy of nonviolent resistance or civil disobedience to alleged evils has become a major factor in social change in the United States, and deserves close attention in this case.

It may be defined in this manner: A group of people seek to attain an end which they believe is morally justified, such as an end to racial discrimination or to restrictions on freedom of expression. They

frequently discover a statute or administrative regulation which declares that the existing situation is constitutional. Sometimes they discover a statute or regulation which prohibits certain types of conduct seeking to change the status quo. They seek to change the substantive rule, or the procedural rule, through various means, none of which are violent, such as: written petitions, negotiations with the authorities, letters to the newspapers, parades, or public meetings.

If they are unable to achieve their ends through these means which are admittedly legal at the time they are used, they search for other methods of achieving their ends which will be more effective. In their search they limit themselves to those procedures which cause them to bear witness to their beliefs -- that is, methods in which they use their own bodies to demonstrate to the authorities, and to the public, the correctness of their views -- and methods which do not involve the use of force or violence.

They consciously act in a manner which may violate existing concepts of proper procedure in order to achieve an end which is to change an existing substantive rule.

The individual demonstrators are frequently arrested in this effort. During the ensuing months and years in which their cases are before the courts, the public and the government must puzzle over the substantive rule against which the defendants were protesting, and also over the nature of passive nonviolent resistance.

In the current period in this country, by the time the defendants are before the highest court in the land, frequently public opinion or legislative action or judicial decision has changed the substantive rule. In other words, frequently the protesters find their cause crowned with victory before they have completed the judicial aspect of their witness.

When this happens, the question of the propriety of their procedure for achieving their goal is still before the courts. Not infrequently, in this period of increasing use of the methods of nonviolent action, the courts have held that it would be an injustice to the demonstrators, and of no value in terms of keeping the public peace, to punish them because

of their peaceful method of bringing to the attention of the public unjust substantive rules which have now been modified. And when this happens, their criminal charges are held to have abated.

In other words, what may have been, at the time committed, a deliberate act in violation of known statutes or regulations done in a manner not necessarily authorized by existing law, frequently is redefined by the end of the case as a wilful act which brought about necessary reform in substantive law in a manner not out of keeping with the public peace.

A deliberate act of civil disobedience, then, may result in both immediate arrest and ultimate dismissal of charges when the demonstrators seek to change a rule or regulation which society is almost ready to abandon and when their actions to bring about this change do not endanger the lives or property of anyone else.

"Sit-ins" have been recognized by official government circles as one of the principal causes for the removal of racial barriers in publicly operated facilities, and even in many areas of private concern. See Report, United States Commission on Civil Rights (1961), Vol. 1, p. 4.

Similarly, the sit-in at Sproul Hall has been recognized as one of the principal causes for the alteration of University regulations limiting the exercise of First Amendment liberties and the reaffirmation by the Academic Senate and the Board of Regents of the principles enunciated therein. See A Suggestion for Dismissal filed in this case, App. C -- Academic Senate Resolution, Dec. 8, 1964; App. D -- Regents' Actions, Nov. 20 and Dec. 18, 1964; Student Political Activities and the Civil Rights Revolution, p. 15, last paragraph.

The United States Supreme Court has just discussed the constitutional problem raised by punishment of persons for acts they committed in protest against a state statute or custom when Congress later passes a statute in contradiction to such state statute. In Hamm v. City of Rock Hill, 85 S.Ct. 384, decided Dec. 14, 1964, the Court held that State trespass convictions of those who participated in "sit-in" demonstrations at lunch counters in clear violation of state laws, and before

passage of the Civil Rights Act of 1964 justified such conduct, must be abated:

> . . . the principle takes the more general form of imputing to Congress an intention to avoid inflicting punishment at a time when it can no longer further any legislative purpose, and would be unnecessarily vindictive. (at 390)

It follows from all this that at the time of the arrests of the students, they were peaceably exercising fundamental liberties of free speech, assembly and petition, protected by the provisions of the state and federal constitutions. This protection is not limited to causes which are later judicially held to have been justified.

In other words, assembly to petition for a change in statute or regulation involves two distinct questions:

1. The validity (or, in some cases, constitutionality) of the statute or regulation being protested;

2. The method of protesting.

The First Amendment protects the method of protesting by peaceable assembly and petition even when the purpose of the protest is not ultimately upheld in the courts. E.g., in its decision reversing breach of the peace convictions for parading and demonstrating in Edwards v. South Carolina (1963) 372 U.S. 229, the Court did not even mention the invalidity of the statutes being protested, but rested its decision solely on the liberties of the demonstrators, citing cases in which the speaker or demonstrator attacked statutes or regulations clearly constitutional.

It is in this context that the statutes involved here must be analyzed, and their invocation against the students by the state authorities. See also the broad content of protected speech and the careful concern that it not be fettered with fear of criminal or economic (libel action) restraints expressed in New York Times and Abernathy v. Sullivan (1964) 376 U.S. 254, 84 S.Ct. 710; Garrison v. Louisiana, 85 S.Ct. 209 (November 23, 1964); Edwards v. South Carolina (1963) 372 U.S. 229, 83 S.Ct. 680.

V. THE LAW

It must be conceded that the statutes under which these students were arrested were not drawn with the situation at Sproul Hall on Dec. 3, 1964, in mind. Nor do they fit the circumstances there with that precision required of criminal statutes. As to these students in these circumstances, the statutes are vague and uncertain.

And it will not do to argue that the students would not have acted differently had they understood more precisely what conduct was forbidden by the California Penal Code. The many decisions reversing convictions under vague and indefinite statutes (or clear statutes with vague and indefinite standards) make it clear that it can never be presumed that defendants would have acted precisely as they did had they been correctly informed of the limits of unlawful behavior. Raley v. Ohio (1959) 360 U.S.423, 439, 79 S.Ct.1257, 1267.

A. The Trespass Charge

Penal Code §602(o) provides that:

> Every person who willfully commits any trespass by . . .
> * * *
> Refusing or failing to leave a public building of a public agency during those hours of the day or night when the building is regularly closed to the public upon being requested to do so by a regularly employed guard, watchman, or custodian of the public agency owning or maintaining the building or property, if the surrounding circumstances are such as to indicate to a reasonable man that such person has no apparent lawful business to pursue; is guilty of a misdemeanor.

Whether the Regents of the University of California, a public corporation, is a public agency within the purview of the statute is a question of statutory construction with which this writing is not concerned, but it would appear that the matter is not free from doubt. See Memorandum in Support of the Motion for Pretrial.

The concern here is whether the standards enunciated in Penal Code §602(o) are sufficiently explicit on their face or as applied to the

circumstances involved here to satisfy the free speech and due process requirements of the constitutions of the State of California and of the United States. Looked at from the viewpoint of the students who were permitted by the University administration to enter Sproul Hall and sit-in as a form of protest and as an exercise of their constitutional rights, it would appear that the statute here is vague, ambiguous and unintelligible:

1. Is the Regents of the University of California a "public agency"?

2. Is Sproul Hall a "public building of a public agency"?

3. Are the students on a campus the equivalent of "the public"?

4. Does the fact that Sproul Hall is regularly closed to "the public" at night also mean that the Hall is closed to the students?

5. Does petitioning for a redress of grievances at the site of the governing power (Sproul Hall), by means of peaceful assembly, constitute "lawful business"?

The use of a "reasonable man" test to determine whether "the surrounding circumstances" are such as to indicate that a person (apparently a member of the public) has no "apparent lawful business" in the building seems only a means of licensing the custodian in the first instance and ultimately the trier of the facts to make any subjective judgment he may desire to make.

Certainty in a criminal statute is a well established requirement of due process. Lanzetta v. New Jersey, 306 U.S. 451; In re Newbern, 53 C.2d 786, 3 Cal. Rptr. 364. Section 602(o) violates this rule in numerous ways. In Newbern, the term "common drunk" was held overly vague and subject to the vice of different interpretations in different courts by various judges and juries. How much more is this statute subject to the same unconstitutional results, with so many vague and ambiguous elements to be satisfied. Cf. Herndon v. Lowry, 301 U.S. 242, 57 S.Ct. 732, 81 L.Ed. 1066. This analysis probably has not exhausted other ambiguities that can be found in the law.

And there is another problem, similar to that in Cox v. Louisiana. The students here mounted a series of protests against enforcement of

the dormant rule forbidding students to collect funds or names of persons to participate in off-campus political action while on campus. They held large meetings on the steps of Sproul Hall almost daily, sat-in at Sproul Hall Sept. 30, marched through campus to the Board of Regents meeting on Nov. 20, sat-in at Sproul Hall again on Nov. 23, and walked into Sproul Hall on Dec. 2 with the clearly-stated intention of sitting-in.

During these incidents the University did not seek to prevent the students from using these procedures to demonstrate their views.

If the University, at 2 p.m. on Wednesday, Dec. 2, had believed that the entrance of large numbers of students into Sproul Hall would cause the regularly conducted business there to be disrupted, or would in any other way endanger the public peace, the few campus police on hand could have locked the doors to the building and the students could not have entered. Had the students behaved in a manner causing disturbance to the public peace between 2 p.m. Wednesday, Dec. 2, and 3 a.m. Thursday, Dec. 3, the police could have arrested them for such conduct.

The facts are, however that the University administration did not establish a clear set of regulations for student conduct and enforce them consistently, nor was it consistent in its requests for arrests of its students for certain conduct. Instead, like the Baton Rouge officials in Cox, the University administration enforced its regulations selectively, in its "unfettered discretion", and requested police enforcement selectively. On Dec. 2 and 3 this amounted to a kind of entrapment of the students whom the administration permitted to enter Sproul Hall for the purpose of sitting-in to protest the University regulations; permitted to remain there during business hours on Wednesday, Dec. 2; permitted to remain there after the building was normally closed on Wednesday, Dec. 2, and then asked to leave, on threat of arrest, at 3:30 a.m. when they were behaving in the same peaceable manner as earlier and were not disrupting anything. See Raley v. Ohio (1959) 360 U.S. 423, 438, 79 S.Ct. 1257, 1266.

Clearly this was "a deprivation of the right of fair warning" condemned in Bouie v. City of Columbia (1964) 84 S.Ct. 1697, discussed below, p. 19.

B. The Unlawful Assembly Charge

Penal Code §409 provides that:

> Every person remaining present at the place of any riot, rout, or unlawful assembly, after the same has been lawfully warned to disperse, except public officers and persons assisting them in attempting to disperse the same, is guilty of a misdemeanor.

Since the statute covers "riot, rout or unlawful assembly," it is clear that it subsumes within itself all the terms and definitions in the other provisions of the law dealing with "riot, rout and unlawful assembly," discussed in the Memorandum in Support of the Motion for Pretrial. From the viewpoint of the constitutional protection for those who are peaceably assembling and protesting, it appears clear that the statute is broad enough, vague enough, and ambiguous enough to sweep within its ambit much speech, assembly, and petition that is ordinarily protected from government impingement.

In terms of the constitutional standards for precision and narrowness in criminal statutes:

1. Could these defendants have known with the requisite certainty that their assembly in Sproul Hall at 3 a.m. Thursday morning was a "riot, rout, or unlawful assembly"?

2. Could they have determined what specific conduct amounted to "riot, rout or unlawful assembly" and what conduct was lawful?

3. How did their conduct differ at 3 a.m. Thursday from their conduct at 2 p.m. on Wednesday when they were permitted to enter Sproul Hall, or at the hour the building was locked for the night, or at 1 or 2 a.m. Thursday?

4. Why was their conduct at that time not protected from government interference as an expression of freedom of assembly and petition?

In view of "the firstness of the First Amendment", no prior restraints can be imposed by government on the exercise of liberties protected therein. For this reason, the constitutionality of these

arrests must be based upon the actions of the defendants at 3 a.m., the time of the arrests, and not the expected situation when Sproul Hall was opened later that morning at the normal hour. Near v. Minnesota (1931) 283 U.S. 697, 51 S.Ct. 625.

These questions suggest the constitutional standards of freedom of expression and specificity which this statute, as written and as applied here, cannot meet. The facts here are much more favorable to defendants than in Cox or the other recent civil disobedience cases discussed: here no public (or other) work was being disrupted at or near the time of the arrests; there were no hostile observers who might create a breach of the peace; there was no public street being blocked.

C. The Resisting Arrest Charge

Penal Code §148 provides:

> Every person who wilfully resists, delays, or obstructs any public officer, in the discharge or attempt to discharge any duty of his office, when no other punishment is prescribed, is punishable by a fine not exceeding one thousand dollars, or by imprisonment in a county jail not exceeding one year, or by both such fine and imprisonment.

This section, read together with Penal Code §834(a), contains the unconstitutional vagueness or ambiguity discussed above as to the other two sections.

One possible construction of this section is that when the words "resists, delays or obstructs" are used, they are intended to do no more than to punish those who use positive physical force in resisting arrest.

If it be argued that the statute does more than this and covers situations in which there is inaction, i.e., going limp, then the statute, as construed and applied, violates due process provisions under the Supreme Court ruling in Bouie v. City of Columbia (1964) 84 S.Ct. 1697. In the Bouie case, the trespass statute appeared to be narrow on its face. It applied to "entry upon the lands of another . . . after notice . . . prohibiting such entry . . . ." But it was construed by the state court to include remaining upon the lands of another . . . after notice . . . . The United States Supreme Court held that this construction encompassed conduct which was outside the scope of the statute as written. It was held that such retroactive judicial

construction of the law was violative of due process:

> There can be no doubt that a deprivation of the right of fair warning can result not only from vague statutory language but also from an unforeseeable and retroactive judicial explanation of narrow and precise statutory language. 84 S.Ct., at 1702.

Similarly here, the State cannot, by retroactive judicial construction, redefine "wilfully resists, delays, or obstructs" to mean passively resists. Nor can it constitutionally maintain that the statute contains the additional phrase (underlined): "wilfully resists, delays, obstructs" or fails to assist. This is condemned in Bouie.

VI. THE ADDITIONAL GROUNDS FOR DEMURRER

1. An additional ground for demurrer as to Count I is that it fails, on its face, to state a public offense in that there is no charge that the Regents of the University of California is a public agency. Nor may the complaint be amended to cure such failure for, as a matter of law, the Regents are not a public agency as used in Penal Code §602(o). See California Constitution, Act. IX, §9.

The reasons in support of this demurrer are specified in the Memorandum in Support of Motion for Pretrial Hearings, pp. 19-23, filed this day together with this demurrer, and are made a part hereof.

2. An additional ground for demurrer to Count III is that it fails to charge a public offense in that it does not charge that no punishment for the conduct alleged to be in violation of Penal Code §148 is otherwise prescribed, which is a prerequisite to the application of Penal Code §148.

For the reasons specified in the Memorandum in Support of Motion for Pretrial Hearing, pp. 39-40, the punishment prescribed for the misdemeanors charged in Counts I and II do punish the conduct charged in Count III. These reasons are made a part hereof.

VII. THE CONCLUSION

In sum, the free speech, due process, and equal protection provisions of the federal and state constitutions specifically protect

these defendants from state court prosecutions for exercising their liberties to speak, to sit-in, to assemble in order to petition for a redress of grievances. This protection is not limited to speech, sit-ins or assembly to petition for the redress of valid grievances only. This state and nation are committed under the Constitutions to protect advocacy of error as well as truth precisely because the framers of the Constitution had observed that yesterday's error often proved to be today's truth.

These liberties come first; they are primary to our form of government. They belong to all citizens, but most especially to students and the academic community, for without such freedoms on our campuses, there can be no research, no creativity, no probing to lead us all to the future.

No agency of government can place prior restraints on the exercise of these liberties.

Nor can any agency of government entrap citizens by seeming to permit conduct and then cause arrests to be made for the self-same conduct; nor can it deprive citizens of the right of fair warning.

Nor can any agency arrest citizens for conduct not clearly and specifically forbidden by a constitutionally and narrowly drawn statute.

Should it develop that the citizens arrested because of their method of petitioning for redress of grievances or for their speech were right in protesting an unjust, unconstitutional statute, rule or regulation, and the courts, on appeal, hold that the statute, rule or regulation is void, then the arrests may abate.

These simple principles, shortly set down, cover our current view of First Amendment liberties and the limitations on the restrictions on their exercise. It may be said that this leaves very little room for law enforcement, since law enforcement officers must cherish the primacy of conduct of which they may disapprove; must not restrain such conduct until it creates a disturbance; even then, they must protect the demonstrators rather than the persons aroused by such speech; must neither act too soon as to commit prior restraint nor too late as to entrap; and, if they are wrong, the citizens will have their convictions abated.

But this is the precise purpose of the First Amendment and its state counterparts -- to leave very little room for the limitation or control of speech on public questions spoken with no intent to defame.

Therefore, the demurrer should be sustained because the facts stated in each count fail to state a public offense, and because this Court has no jurisdiction of the offenses charged for the reason that the statutes, on their face and as construed and applied, are unconstitutional, null and void.

Respectfully submitted,

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IN THE MUNICIPAL COURT FOR THE BERKELEY-ALBANY JUDICIAL DISTRICT, COUNTY OF ALAMEDA, STATE OF CALIFORNIA

PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff-Respondent,	
v.	Nos. C-7468 through C-7547
MARIO SAVIO, et. al., Defendant-Appellant.	STATEMENT ON APPEAL

Defendants-appellants named in the list attached to this statement request the Clerk of the Court to prepare a record on appeal as provided in Rule 183 of the California Rules of Court; and which include therein all matters listed in said Rule and to include therein the following items, whether specified or included in Rule 183 or not:

Defendants' Demurrer and Points and Authorities filed therewith;

Defendants' Motion for a Pre-Trial Conference and Points and Authorities filed therewith;

Defendants' Proposed Agenda for Pre-Trial Conference;

Suggestion for Dismissal submitted by certain faculty members of the University of California, Berkeley;

Memorandum of Points and Authorities in Opposition to Demurrer;

Notice of Motion and Motion to Quash Subpoena of Edmund G. Brown, and Memorandum of Points and Authorities in Support of Motion to Quash Subpoena;

Notice of Motion and Motion to Quash Subpoena;

Declaration of Malcolm Burnstein in Opposition to Motion to Quash Subpoena of Edmund G. Brown and Memorandum of Points and Authorities in Support of the Subpoena of Edmund G. Brown;

Notice that Pending Cases may Constitute a "Big Case";

Defendants' List in Support of Motion to Consolidate;

Motion for Consolidation for a Representative Nonjury Trial with Submission of all Other Cases on the Police Reports and the Evidence Introduced at the Representative Trial, and Declaration in Support thereof;

Motion for Consolidation for a Single Nonjury Trial, and Declaration in Support thereof;

Motion for Consolidation for a Representative Jury Trial with Submission of all Other Cases on the Police Reports and the Evidence Introduced at the Representative Trial, and Declaration of Malcolm Burnstein in Support of Defendants' Motion for a Representative Jury Trial with Submission of all Other Cases;

Motion for Consolidation for a Single, Joint Jury Trial, and Declaration of Malcolm Burnstein in Support of Defendants' Motion for a Single Joint Jury Trial;

Motion for Pretrial Hearings and for Consolidation for Purposes of Pretrial Hearings, and Memorandum in Support of Motion;

Motion of Points and Authorities in Support of Motion to Reduce Bail; and

All other written Motions filed up to and including the date of the filing of this statement, and all rulings thereon.

In connection with this statement, appellants give notice that they intend to rely upon and file a reporter's transcript of the proceedings held in the above entitled Court, and request that the reporter's transcript include all proceedings in the above numbered cases, including all proceedings prior to, and/or in addition to the First Consolidated Trial, up to and including the date of sentencing for those defendants included in the First Consolidated Trial, C-7468 through C-7547, and defendants-appellants hereby request that all parts of such transcript not already prepared be prepared forthwith.

The defendants-appellants joining in this statement fall into two groups. The first includes all defendants included in the trial of 153 defendants, entitled First Consolidated Trial, C-7468 through C-7547; the remaining defendants all submitted their cases to the above entitled Court on the testimony adduced at that trial and upon a written stipulation. That stipulation was, for purposes of this appeal, identical for all defendants, except that as to those defendants charged with a violation of Penal Code Section 148 certain stipulations were included that were not made as to all other defendants. Except as the transcript of the First Consolidated Trial contains evidence relating to specific defendants, all defendants therefore were convicted on the basis of the same testimony.

All defendants were convicted of a violation of Section 602(o) of the Penal Code; most defendants were additionally convicted of a violation of Section 148 of the Penal Code.

Appellants, as stated above, in tend to file a reporter's transcript of the entire trial. Insofar as can be determined at this time, each and all intend to rely inter alia on the following grounds for reversal of their convictions and sentences:

(1) The provisions of California Penal Code Sections 602 (o) and 148, on their face and as applied to the facts proven at trial, (a) deprive appellants of their liberty without due process of law contrary to California Constitution, Article I, Section 13, and the Fourteenth Amendment to the United States Constitution; (b) deny appellants equal protection of the law contrary to California Constitution Article I, Sections 11 and 21, and the Fourteenth Amendment to the United States Constitution, in that (i) they are arbitrary and capricious; and (ii) they are vague and unconfined, and fail to give fair notice of what is prohibited; (c) deprive appellants of their liberties guaranteed by California Constitution Article I, Sections 1, 9, and 10, and the First and Fourteenth Amendments to the United States Constitution, in that (i) they authorized infringement of appellants' rights to freedom of speech, press, assembly, and petition for redress of grievances; (ii) they constituted and authorized prior restraints on appellants' exercise of those rights; and (iii) they authorized curtailment of appellants' academic freedom (more specifically guaranteed by California Constitution, Article IX, Section 1).

(2) Appellants were deprived of their right to a Jury trial contrary to the provisions of California Constitution, Article I, Section 7, and Fifth, Sixth, and Fourteenth Amendments to the United States Constitution.

(3) Appellants were denied a fair trial, contrary to the provisions of California Constitution, Article I, Section 13, and the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution, in that, among other things, the trial court (a) refused to conduct effective pretrial proceedings so that their defense was seriously hampered; (b) refused to grant mistrials when prejudicial publicity saturated the community during the trial; (c) refused to grant a mistrial when responsible public officials publically announced the conclusion that defendants were guilty of the charges for which they were then standing trial; (d) admitted statements taken from appellants during and after their arrests despite the fact that appellants were not advised of their right to counsel, to remain silent, etc., when these statements were taken; and (d) rejected evidence vital to appellants' defense, particularly evidence establishing the underlying purposes of their conduct.

(4) The convictions under Penal Code Section 602 (o) cannot be sustained as a matter of law, in that (a) the section was not intended to proscribe appellants' conduct as established by the evidence; (b) the Regents of the University of California are not a "public agency" within the meaning of that section; and (c) the Governor, and not the authorized agents of the Regents, decided to have appellants removed, evidence of which fact was repeatedly denied over objection.

(5) The evidence was insufficient to sustain convictions under Penal Code Section 602(o) in that (a) at the time of their arrests appellants had lawful business to pursue; (b) appellants were not requested to leave by a regularly employed guard, watchman or custodian of the University, acting as such; (c) appellants were not asked by any regularly employed guard, watchman or custodian what their business was; and (d) as to those arrested after 7 a.m., December 3, 1964, their convictions rest on the erroneous inference that they must have in fact entered the building before 7 a.m. that morning, when the building was not regularly open to the public, when the basis for the inference was expressly ~~introduced~~ contradicted by the People's evidence, and the court thereby unconstitutionally shifted the burden of proof to the defendants.

(6) The convictions under Penal Code Section 148 cannot be sustained as a matter of law in that (a) there is no duty of citizens to cooperate with their arrest or removal apart from refraining from violence; (b) the provisions of Penal Code Section 148 do not apply to criminal omissions, which the evidence established was the nature of the offense charged under that section; (c) the conduct charged under Count III is identical to that charged under Count I, so that a punishment is "otherwise prescribed" for the conduct proved; thus the provisions of Penal Code Section 148 cannot apply; (d) the arrests were not lawful, and refusal to cooperate affirmatively is not proscribed; and (e) the arresting and/or removing officers were not "public officers".

(7) The evidence was insufficient to sustain appellants' convictions under Penal Code Section 148 in that (a) with perhaps a few exceptions, there is no evidence of resistance of arrest; (b) the record clearly shows that any delay or obstruction of their removal was attributable to the identification procedures incidental to their arrest and to the crowds of spectators and representatives of news media allowed in the building by the law enforcement officials arresting and removing them; and, in any event, (c) since appellants were repeatedly, and solely advised that their refusal to walk out

would constitute "resistance" of arrest (rather than delay or obstruction), their convictions can only be sustained under Count III on that ground, which is not established by the evidence as a matter of law.

(8) Appellants were punished twice for the same offense and/or for acts arising out of a single transaction, contrary to the provisions of Penal Code Section 654.

(9) Appellants' sentences deny them equal protection of the law and due process of the law, contrary to the provisions of California Constitution, Article I, Section 13, and the Fifth and Fourteenth Amendments to the Constitution of the United States, and are excessive in violation of California Constitution, Article I, Section 6, and the Eighth Amendment to the United States Constitution, as well as the Seventeenth Canon of Judicial Ethics, in that the trial judge, without any basis in fact, arbitrarily increased the punishment of those who refused to waive their constitutional right to a trial and/or their statutory right to an appeal on the merits; and sentenced appellants far more severely than is the accepted practice, and imposed unusual, humiliating, and unconstitutional conditions to their probation.

(10) If appellants' motion to perfect the record is denied, then appellants were denied due process of law, contrary to the provisions of California Constitution, Article I, Section 13, and the Fourteenth Amendment to the United States Constitution, and the Eighteenth Canon of Judicial Ethics, by failure of the trial judge to file findings of facts and conclusions of law.

People v. Mario Savio et al.

Portion of Trial Brief Dealing with Charges under Penal Code §148

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NONE OF THE DEFENDANTS VIOLATED PENAL CODE §148

Penal Code §148 provides:

> "Every person who willfully resists, delays, or obstructs any public officer, in the discharge or attempt to discharge any duty of his office, when no other punishment is prescribed, is punishable by a fine not exceeding $1,000, or by imprisonment in a County Jail not exceeding one year, or by both such fine and imprisonment."

The elements the State must prove in this case are:

1. Willful resistance, delay, or obstruction by each of the defendants of some duty of a public officer;

2. That the punishment for the acts proven is not otherwise prescribed;

3. That defendants were lawfully arrested;

4. That the persons defendants resisted, delayed, or obstructed were "public officers" acting as such

and that defendants knew this fact;

5. That defendants, at the time of their arrests, were informed of the nature of the offense for which they were arrested and the intention of the arresting officer then to arrest them;

6. That defendants were advised or were otherwise aware of the "duty" of a public officer, the discharge of which they were resisting, delaying or obstructing.

None of these essential elements of the offense charged will be established in this case.

I

DEFENDANTS DID NOT ENGAGE IN ANY RESISTANCE, DELAY, OR OBSTRUCTION WITHIN THE MEANING OF §148

The State must establish beyond a reasonable doubt as to each defendant charged with a violation of the Penal Code §148 that he willfully resisted, delayed, or obstructed the effectuation of his arrest or the discharge of some other duty of a public officer.

We are confident that the facts adduced at the trial will conclusively show that none of the students or their sympathizers assembled at Sproul Hall used any overt force or violence of any kind to resist, delay, or obstruct anyone -- a public officer or otherwise -- with respect to anything. Many of the persons assembled willingly accompanied their arresting officers when requested to do so. Obviously, such persons

did not in any way violate §148. The remaining persons merely "went limp" when informed that they were arrested or were to be arrested.

It is the initial burden of the State to establish, beyond a reasonable doubt, as to each defendant charged under §148 that he was not one of the persons who willingly obeyed and accompanied the arresting officers.

Moreover, even as to those students who were not affirmatively cooperative, it is clear as a matter of law that "going limp" cannot constitute "resistance, delay, or obstruction"in violation of Penal Code §148. The governing principle is well stated in Reporter Ware's syllabus in State v. Lewis, 19 Kan. 260, 266 (1877):

> "When upon thy frame the law --- places its majestic paw --- though in innocence, or guilt --- thou artthen required to wilt."

This is precisely what the majority of defendants did -- they wilted.

General "obstruction-of-justice" statutes similar to Penal Code §148 exist in many jurisdictions. The overwhelming weight of authority is that these statutes do not proscribe mere passive inaction unless the legislature has prohibited such inaction in the clearest and most explicit language.

City of Charleston v. Mitchell, 123 S.E.2d 512, 239 S.C. 376 (1961), rev'd. on other gnds., 378 U.S. 551, is directly in

point on this issue. Defendants in the Mitchell case attempted to integrate a lunch counter in a private store by sitting-in. They were ordered to leave by both the store manager and the Chief of Police but refused to do so. They were then charged with trespass and, under a statute closely similar to Penal Code §148, with "interference with a police officer in the discharge of his duty" for failing to obey the Police Chief's order. The Supreme Court of South Carolina dismissed the latter charge, holding as follows:

> "In 47 C.J.S., at page 83, the term 'interfere' has been said to import action, not mere inaction, an active rather than a passive condition, and has been defined as meaning to interpose, to prevent some action, sometimes in a bad sense to intermeddle, to check or hamper, and, specifically to do something which hinders or prevents or tends to prevent the performance of legal duty. In its broadest aspects 'interfere' bears the significance of 'disarrange', 'disturb', 'hinder'.
>
> "In State v. Estes, 185 N.C. 752, 117 S.E. 581... in construing the North Carolina statute, which contains the words 'willfully interfere with or obstruct' an officer in the discharge of his duty, the Court, in granting a new trial, said:
>
>> 'To "interfere" is to check or hamper the action of the officer, or to do something which hinders or prevents or tends to prevent the performance of his legal duty; and to "obstruct" signifies direct or indirect opposition or resistance to the lawful discharge of his official duty. * * * *'

> "It appears to us that the conduct of the appellants in refusing obedience to the request of the Chief of Police of the City of Charleston was merely inaction on their part and did not constitute interference with said officer in the discharge of his official duty. We think the Court was in error in refusing to so hold." 123 S.E.2d 520-21

Several other courts have held to the same effect in unreported decisions. A San Francisco municipal court in California v. White et al. (1960) dismissed sixty-two charges of resisting arrest where defendants had simply gone limp. Charges under N.Y. Penal Law §1851 were dismissed for the same reason in People v. Kelly et. al. Magis. Ct. Brooklyn, March 30, 1962, and in three similar cases in 1963 arising from demonstrations at the Downstate Medical Center in Brooklyn, N.Y.*

In a wide variety of factual situations, the courts have required forceful, affirmative action -- and not merely passive inaction -- for convictions under "obstruction-of-justice" statutes similar to Penal Code §148: In District of Colombia v. Little, 339 U.S. 1 (1949), defendant was charged with violating a District of Colombia ordinance which prohibited any person from "interfering with or preventing" any inspection

* People v. Knight, 228 N.Y.S.2d 981 (Magis. Ct. 1962) does not contradict the above discussed cases. Although the Knight case arose out of a sit-in and defendant was convicted of resisting, delaying, or obstructing an officer, the facts were that defendant pulled the officer's hand from his shoulder and attempted to escape by running into the crowd before laying down on the sidewalk and refusing to move.

authorized by the health and sanitation law. Defendant had refused to unlock the door to her home to permit a health officer to make a sanitation inspection. The Supreme Court held:

> "In view of these facts found by the courts below, the question boils down to whether respondent's mere refusal to unlock the door accompanied by remonstrances on substantial constitutional grounds was the kind of interference prohibited by the regulation. We hold that it was not.
>
> "Although force or threatened force is not always an indispensable ingredient of the offense of interfering with an officer in the discharge of his duties, mere remonstrances or even criticisms of an officer are not usually held to be the equivalent of unlawful interference." (339 U.S. 5-6).

In McBride v. State, 24 S.E.2d 135, 136, 68 Ga. App. 755 (1943), the court construed a resisting an officer statute similar to Penal Code §148 as follows:

> "To constitute obstructing, restricting, or opposing an officer, in attempting to execute his legal process, there must be some overt act consisting of force or threats accompanied by some overt act with the ability and the apparent intent to carry such threat into effect. Mere threats alone or a mere refusal to aid an officer in executing the process, are not sufficient."

In Moses v. State, 6 Ga. App. 251 (1909) defendant was arrested and drove with the sheriff to the jail. When defendant arrived at the jail and realized that there was

no one there to post bond for him he began to curse and refused to enter the jail. The officer took hold of him but the defendant clung to his seat and tried to jerk loose from the officer's grasp. In reversing defendant's conviction for resisting arrest, the court stated:

> "He simply protested against his unreasonable imprisonment and emphasized his natural objection to being incarcerated under the circumstances by refusing voluntarily to go to jail. Under all these circumstances we think the defendant's conduct was neither unwarranted or unlawful and that his conviction was unauthorized." 6 Ga. App. 253.

In Jones v. Commonwealth, 126 S.E. 74, 76-77, 141 Va. 471 (1925) the Supreme Court of Virginia held that even an attempt to escape does not constitute "resisting, hindering or obstructing" arrest in violation of a statute similar to Penal Code §148. The court stated:

> "The fact that the accused sought to escape the officer by merely running away was not such an obstruction as the law contemplates. While it is the duty of every citizen to submit to a lawful arrest, yet flight is not such an offense is will make a person amenable to the charge of resisting or obstructing an officer who is attempting to make an arrest, as there is a broad distinction between avoidance and resistance or obstruction."

In City of Seattle v. Nave, 383 P. 2d, 491, 62 Wash. 2d 446 (1963), the defendant, a motorist stopped for a traffic violation, refused to state his occupation to the arresting

officer, forcibly took his drivers' license away from the officer after the officer had examined it briefly, refused to return the license to the officer, and walked away. The court held that all of this did not constitute "resisting or opposing an officer in the discharge of his duty". In the course of its opinion the court stated:

> "it is not contended that merely being uncooperative, i.e. the refusal of appellant to state his occupation, constituted the offense charged."

Many other cases hold to the same effect:

> Caldwell v. State, 23 So.2d 876, 32 Ala. App. 228 (1946);
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> Harrison v. State, 26 Ga. App. 645 (1921);
>
> State v. Welch, 37 Wisc. 196 (1875);
>
> Regina v. Dagly, 29 CR 55 (NS) (1958);
>
> Regina v. Senenwick, 14 WWK (NS) 523 (1955).
>
> Cf. Model Penal Code §§242.1, 242.2, Proposed Official Draft of the Model Penal Code 213-14 (1962).

It is also clear as a matter of simple statutory construction that Penal Code §148 is violated only by forceful and affirmative resistance, delay, or obstruction and not by mere passive inaction.

The section contains no express proscription of mere inaction. Moreover, Penal Code §693 which is, in effect, the opposite side of the coin to §148, clearly uses the term

"resistance" to refer solely to affirmative force. Section 693 provides that "resistance sufficient to prevent the offense may be made by the party about to be injured... to prevent an offense [such as an illegal arrest] against his person...". It is clear that the "resistance" authorized by §693 is affirmative force. See People v. Perry (1947) 180 P.2d 465, 470, 79 C.A. Supp. 906.

It should be noted that the Penal Code expressly imposes a duty on certain citizens to assist public officers in making an arrest under certain circumstances. Penal Code §150 provides:

> "Every male person above 18 years of age who neglects or refuses to join the posse comitatus or power of the county, by neglecting or refusing to aid and assist in taking or arresting any person against whom there may be issued any process... being thereto lawfully required by any sheriff, deputy sheriff, coroner, constable, judge, or other officer concerned in the administration of justice, is punishable by a fine not less than fifty dollars ($50) nor more than One Thousand Dollars ($1,000)." (Emphasis added).

Obviously, this statute does not require a citizen to assist in his own arrest. By sharp contrast the only express statement in the Penal Code of the duties a person himself subjected to arrest is §834 (a) which provides:

> "If a person has knowledge, or by the exercise of reasonable care, should have knowledge, that he is being arrested

> by a peace officer, it is the duty of such person to refrain from using force or any weapon to resist such arrest."

The Legislature has never attempted to create in California a police state where a citizen must, on pain of conviction of a crime, obey every command and order of a law enforcement officer. On the contrary the Legislature has imposed a duty upon citizens to obey a law enforcement officer or other official only under special and unusual circumstances. In the Military and Veteran's Code, §363, the Legislature has provided:

> "Every officer and enlisted man shall at all times, without equivocation, obey the lawful orders of his superior officers."

Vehicle Code §2800 provides:

> "Obedience to traffic officers
> It is unlawful to willfully fail or refuse to comply with any lawful order, signal, or direction of any traffic officer..."

Vehicle Code §2801 provides:

> "Obedience to Fireman
> It is unlawful to willfully fail or refuse to comply with any lawful order, signal, or direction of any member of any fire department... when wearing the badge or insignia of a fireman..."

See also to the same effect:

Health and Safety Code §13006 (a) (Refusal to obey

orders of any public officer or fireman at a scene of a burning building); Public Resources Code §4012.5 (a) (Refusal to obey orders at the scene of a forest fire).

Accordingly, it is respectfully submitted that, in view of the clear and express language utilized by the Legislature in §§834(a) and 150, and in the other statutes cited and quoted above, this Court cannot, under accepted canons of statutory construction, construe Penal Code §148 which has no such explicit provision, to proscribe the mere inaction of going "limp". See District of Colombia v. Little, supra, 339 U.S. 1 (1949)

II

"GOING LIMP" IS, BY DEFINITION, NOT A RESISTANCE, DELAY, OR OBSTRUCTION OF AN ARREST.

Penal Code §835 defines "Arrest" in classic common law terms:

> "An arrest is made by an actual restraint of a person, or by submission to the custody of an officer."

Accordingly, each of the defendants who may be shown to have "gone limp" did -- by his very inaction of going limp -- affirmatively assist in his own arrest by submitting to

the custody of the arresting officer. See syllabus to State v. Lewis, 19 Kan. 260, 266, quoted supra.

III

DEFENDANTS MAY NOT BE CONVICTED UNDER §148 FOR ANY RESISTANCE, DELAY, OR OBSTRUCTION OF THEIR REMOVAL FROM SPROUL HALL.

Defendants and defense counsel have been kept more or less in the dark as to the exact "duty" of a public officer, the discharge or the attempt to discharge of which defendants are being charged with resisting, delaying, or obstructing under §148.

The prosecuting attorney has at times suggested that defendants may be prosecuted under §148.for resisting, delaying, or obstructing their removal from Sproul Hall. To sustain this charge the State must, of course, initially establish that the removal of defendant from Sproul Hall was as a matter of law a duty of the public officers at the scene, and that each defendant so charged willfully committed some act which constituted resistance, delay, or obstruction of his removal.

Even if these hurdles are met, however, this charge may not be sustained since any such resistance, delay, or obstruction was an inherent part of the offenses of refusing to disperse and leave the building with which defendants are here charged under Penal Code §§409 and 602 (o).

Section 148 is applicable only to conduct "when no other punishment is prescribed". Accordingly, defendants can not be charged under §148 with resisting, delaying, or obstructing their dispersal or removal from Sproul Hall.

IV

DEFENDANTS MAY NOT BE CONVICTED UNDER §148 SINCE THEIR ARRESTS WERE ALL UNLAWFUL

It has long been settled law that a person may lawfully resist, delay, or obstruct an unlawful arrest either of himself or of a third person.

> Jackson v. Superior Court in and for Merced County, 219 P.2d 879, 98 Cal. App. 2d 183 (1950);
>
> People v. Perry, 180 P.2d 465, 467, 79 Cal. App. 2d Supp. 906 (1947);
>
> People v. Randolph, 306 P.2d 98, 105, 147 Cal. App. 2d Supp. 836 (1957);
>
> Penal Code §§692-94.

Penal Code §834 (a), enacted in 1957, does not change this fundamental rule; it merely prohibits the use of such force or weapons as raise a threat of bodily harm. See People v. Burns, 198 Cal. App.2d Supp. 839, 18 C.R. 921 (1961).

(a)

If the charges against any defendant under §§602(o) and 409

of the Penal Code are not sustained at the trial, such defendant may not be convicted under §148 since it is then established that his arrest was unlawful. All of the defendants were arrested without a warrant. A peace officer may make an arrest without a warrant for an offense only if he has reasonable grounds to believe that an offense is being committed in his presence and the offense is actually so committed. As the court held in People v. Perry, supra, 180 P.2d 465, 467, 79 Cal. App. 2d Supp. 906 (1947), if in fact no misdemeanor or offense was committed, the arrest is unlawful. See also People v. Randolph, supra, 306 P.2d 98, 105, 147 Cal. App. 2d Supp. 836 (1957).

These holdings have not been changed by the subsequent amendment to Penal Code §836 in 1957. Sub-division (3) of §836 as presently in effect authorizes a peace officer to arrest without a warrant "where he has reasonable cause to believe that the person has committed a felony, whether or not a felony has in fact been committed." Sub-division (1) of the same statute, dealing with arrests for public offenses committed in the presence of a peace officer, has no parallel provision authorizing an arrest "whether or not the public offense has in fact been committed."

Accordingly, any defendant acquitted under §§602(o) and 409 must also be acquitted of all charges under §148.

(b)

Even where a defendant is convicted under either Penal Code §602(o) or §409, it is clear that his arrest is unlawful unless the State proves, beyond a reasonable doubt, that the officer who arrested each defendant was present when that defendant was duly requested to leave the building in the manner required under §602(o) or when said defendant was given a proper warning to disperse under §§ 409 and 762, as the case may be.

As is discussed in earlier portions of this memorandum, an offense under §602(o) is committed only when a defendant has received a proper request to leave the public building as described in said statute; and an offense is committed under §409 only when the unlawful assembly has been properly warned to disperse in accordance with §§409 and 762 of the Penal Code. If the particular officer who arrested each defendant was not present at the time that defendant was given the request or warning required by these sections, he was not present at the time the offense was committed. Therefore, he had no authority to arrest that defendant without a warrant. The court squarely held to this effect in Jackson v. Superior Court in and for Merced County, 219 P.2d 879, 98 Cal. App. 2d 183 (1950), where two officers, Borth and Adcock, attempted to arrest the defendant Jackson for an offense committed in the presence of Officer Borth only. The court held:

> "It is without dispute that the attempted arrest charged to have been resisted was being made without a warrant and was for an offense committed by the boy Harvey Jackson some twenty-eight hours previously in the presence of Officer Borth. While it is not clear from the transcript that Officer Borth attempted to make any arrest and, indeed, it substantially appears that the arrest was being attempted by Officer Adcock upon information from Officer Borth, yet since both officers were present we have chosen to treat the matter as an arrest attempted by Officer Borth. It is of course obvious that Officer Adcock upon mere information from Officer Borth would have no lawful right, without a warrant, to arrest the boy for the commission of a public offense admittedly not rising above the quality of a misdemeanor." 219 P.2d 881.

Accordingly, each defendant charged with violating Penal Code §148 must be acquitted unless the State proves, beyond a reasonable doubt, that the officer who arrested that defendant was present when that defendant was duly requested to leave the building in accordance with §602(o) or warned to disperse in accordance with §§409 and 726 as the case may be.

(c)

It will also be clearly established at the trial that nearly all of the defendants were unlawfully arrested because their arrests -- without a warrant -- did not occur within a reasonable time after their offense was committed.

Assuming, arguendo, that any violation of §§602(o) or

409 of the Penal Code did occur, such violations occurred either atapproximately 6:45 P.M. on December 2 when Lt. Chandler of the campus police went to each floor of Sproul Hall and announced that the building was about to be closed and that all persons in it must leave or, at the very latest, at about 3:30 A.M. on December 3 when Chancellor Strong and Lt. Chandler made formal announcements on each floor of the building purporting to comply with the request-to-leave provisions of §602(o) and the warning-to-disperse provisions of §§409 and 726 of the Penal Code. Only a few of the defendants were arrested immediately after even this 3:30 A.M. warning. Arrests were made at a leisurely rate from 3:30 A.M. on December 3 until about 3:45 P.M. that afternoon -- a period of twelve hours or more after whatever offenses involved were committed. It is respectfully submitted that there was ample opportunity for the arresting officers to obtain arrest warrants and that all or nearly all of these arrests were unlawfully made more than a reasonable time after the offense had been committed.

The strict time limitations upon the right of a peace officer to arrest, without a warrant, for a public offense committed in his presence are thoroughly and clearly outlined in Jackson v. Superior Court in and for Merced County, 219 P.2d 879, 881-882, 98 Cal. App. 2d 183 (1950). The court's

thorough discussion of this issue is herein set forth at length:

> "By the specific provisions of the Penal Code, §834 et. seq., peace officers and private citizens alike may make an arrest without a warrant for a public offense committed or attempted in the presence of the person making the arrest... But to the right to arrest without warrant the law attaches the following conditions: The arrest must be made at the time the offense or any part of the offense is being committed or within a reasonable time thereafter or upon fresh and immediate pursuit of the offender. 6 C.J.S., Arrest, §6, p. 590. As stated by the Supreme Court in People v. Craig, 152 Cal. 42, 47, 91 P. 997, 1000, 'It seems to be generally held that an arrest for a misdemeanor without a warrant cannot be justified, if made after the occasion has passed, though committed in the presence of the arresting officer.'
>
> "It was said in Oleson v. Pincock, 68 Utah, 507, 251 P. 23, 26: 'No hard and fast rule can, however, be laid down which will fit every case respecting what constitutes a reasonable time. What may be so in one case under particular circumstances may not be so in another case under different circumstances. All that can be affirmed with safety is that the officer must act promptly in making the arrest, and as soon as possible under the circumstances, and before he transacts other business.'
>
> "In Wahl v. Walton, 30 Minn. 506, 16 N.W. 397, 398, wherein the statute under consideration was the same as our own and in a case where five hours had elapsed between the time when an officer observed an offense committed and the time he made an arrest without warrant therefor, the court said:

'* * * The power to arrest without warrant, while it may in some cases be useful to the public, is dangerous to the citizen, for it may be perverted to purposes of private malice or revenge, and it ought not, therefore, to be enlarged. When it is said that the arrests must be made at the time of or immediately after the offense, reference is had, not merely to time, but rather to sequence of events. The officer may not be able, at the exact time, to make the arrest; he may be opposed by friends of the offender; may find it necessary to procure assistance; considerable time may be employed in the pursuit. The officer must at once set about the arrest, and follow up the effort until the arrest is effected. In Regina v. Walker, supra [25 Eng. Law & Eq. 589], some two hours had elapsed between the offense and the arrest, and it was held that the authority to arrest was gone, because there was no continued pursuit; and the same was held in Meyer v. Clark, supra [41 N.Y. Super. Ct. 107], because the officer had departed and afterwards returned, the court saying, "The shortness of the interval does not affect the question."

"I 'In this case, some five hours having elapsed * * * during which the defendant was not about anything connected with the arrest, the court was right in its instruction that there was no authority to arrest for that occurrence.'

"In Meyer v. Clark, 41 N.Y. Super. Ct. 107 referred to above in the quotation from the opinion in Wahl v. Walton, the opinion contained the following:

'I do not regard the shortness of the intervening time, between the commission of the offense and the arrest, as affecting the question of the officer's right. If a

short interval continues the right, a longer interval would also, and courts or juries would have to measure degrees of time in determining the rights of parties. And the protection of individuals from arbitrary arrest, will be better secured by requiring a complaint and a magistrate's warrant in all cases of arrest not literally within the letter of the law.

'In the case before us we can see no necessity for making the arrest in the manner it was done. The penalty is a money fine only, and there was no probable danger of an escape of the offender. If there was time to report the case to the captain of the precinct, there was time, or time should have been made, to obtain from a magistrate a warrant. * * * The liberty of the citizen is too sacred to be lightly or causelessly interfered with; and the officers of police, however necessary and valuable they may be as conservators of order and in the enforcement of law, must keep themselves within the limits of the law, and not assume functions unless given in the law...'"

Other courts have strictly applied the same rigid time limits. See:

Smith v. State, 87 So. 2d 917 (Miss. 1956) (deputy left the scene of the offense to get the sheriff; he returned with the sheriff and made the arrest 30-40 minutes later; held: a warrant should have been obtained and the arrest was unlawful);

Butcher v. Adams, 310 Ky. 205, 220 S.W. 2d 398 (1949) (sheriff observed plaintiff illegally

> selling liquor on Election Day, took a brief time solely to consult with the county attorney as to the legality of plaintiff's action, and then returned to arrest plaintiff; held: arrest without a warrant was unlawful because of the delay, and an action for false arrest would lie).

The net effect of the decisions on this issue is that the power to arrest for misdemeanors and minor offenses without a warrant is "dangerous to the citizen" (see Wahl v. Walton, quoted in Jackson v. Superior Court, supra) and that an arrest warrant should be obtained whenever there is an opportunity to do so and there is no danger that the accused will escape during the time required to obtain the warrant.

The language of Meyer v. Clark quoted in Jackson v. Superior Court, supra applies with powerful emphasis to the facts of this case:

> "there was no probable danger of the escape of the defendant. If there was time to report the case to the captain of the precinct, there was time, or time should have been made, to obtain from a magistrate a warrant."

In the instant case there was certainly no risk of escape. Moreover, the officers at Sproul Hall were in constant communication with the Governor and other public and university

officials. Indeed, published reports of the incident have indicated that communications with Governor Brown began as early as 9:30 or 10:00 P.M. on the evening of December 2. There was, accordingly, ample time and opportunity to obtain proper arrest warrants.

Accordingly, the arrests of all defendants were unlawful -- and such defendants cannot be convicted of any violation of §148 -- except for any defendants (i) convicted under Penal Code §602(o) or §409, where the State proves, beyond a reasonable doubt: (ii) that the arresting officer was present when said defendant received the request to leave or warning to disperse required for such conviction and (iii) that defendant was arrested by said officer immediately after receiving such request or warning.

IV

THE OFF-CAMPUS POLICE WERE NOT "PUBLIC OFFICERS" ACTING AS SUCH -- OR, AT LEAST, MANY DEFENDANTS WERE NOT AWARE THAT THEY WERE

Penal Code §148 prohibits only the resistance, delay, or obstruction, of a "public officer, in the discharge or attempt to discharge any duty of his office." Resistance of a private citizen -- even in performing a valid citizen's arrest -- is not within the statute. Moreover, it is clear that defendants cannot be convicted of willfully

violating §148 unless it is shown that, at the time of their actions, they knew the person they were obstructing to be a public officer acting as such. See:

> Sparks v. United States, 90 F.2d 61 (6 Cir. 1937);
>
> State v. Bandy, 2 P.2d 748, 749, 164 Wash. 216 (1931);
>
> Carter v. United States, 231 F.2d 232 (5 Cir. 1956), cert. den., 351 U.S. 984;
>
> State v. Gros, 43 So. 2d 232, 216 La. 103 (1949).

It is respectfully submitted that most if not all of the law enforcement officers at Sproul Hall on December 2-3 were not public officers acting as such -- or at least were not known so to be by defendants -- since:

(i) the majority of officers present at Sproul Hall were off-campus police with no law enforcement authority within the confines of the campus;

(ii) all of the officers were acting unlawfully under instructions from Governor Brown who unlawfully took over control of the campus from University authorities early in the evening of December 2; and

(iii) many of the officers who engaged in widespread kicking, beating, and clubbing the students deliberately removed their badges to avoid identification by badge number.

Education Code §23501 grants jurisdiction and responsibility for law enforcement within the University campus to the campus police. While the terms of the statute do not expressly so indicate, the announced policy of the University, and the actual practice of City and County authorities, as well, has been that the campus police have "sole responsibility for the enforcement of state and federal law on the University campus". See, the University Bulletin 50 (1964-65). See also 30 Ops. Cal. Atty. Gen. 162, 166:

> "It is clear, however, that the power of the Regents to operate, control, and administer the University is virtually exclusive."

Under these circumstances, the only authority of off-campus officers to arrest any of defendants on the campus for acts done within the campus, was as private citizensaand not as public officers. See People v. Martin, (1964) 225 A.C.A. 125, 36 Cal. Rptr. 924 (arrest by Los Angeles city polic outside city limits must be tested as a citizen's arrest); People v. Alvarado, (1962) 208 C.A.2d 629, 25 Cal. Rptr. 437. And resistance to such arrests is not proscribed by Penal Code §148.

According to several published reports, Governor Brown took control of the Berkely campus from University authorities early in the evening of December 2 and thereafter by telephone personally directed the actions of all law enforcement officers

at Sproul Hall. The University of California "is a constitutional corporation or department which constitutes a branch of the state government equal and coordinate with the legislature, the judiciary, and the executive". 30 Ops. Cal. Atty. Gen. 162, 166. And, as has been noted above, the Regents -- not the Governor -- have "virtually exclusive" power to operate, control, and administer the University.

The only possible authorization forGovernor Brown's taking control of the situation at Sproul Hall on December 2-3 seems to be under §§143, 146 of the Military and Veteran's Code (formerly §§728, 732 of the Penal Code of 1872). These sections provide, in pertinent part:

> "The Governor may call into active service such portion of the active militia as may be necessary, and if the number available is insufficient, he may call into active service such portion of the unorganized militia as may be necessary, in any of the following events:
>
> ****
>
> (d) Upon call of the chief executive officer of any city or city and county, or any justice of the Supreme Court, or of any judge of the superior court, or of any sheriff, setting forth that there is an unlawful or riotous assembly with intent to commit a felony, or to offer violence to person or property, or to resist the laws of the State or the United States or that there has occurred a public clamity or catastrophe for which aid to the civil authorities is required." (§146).
>
> "Whenever the Governor is satisfied that rebellion, insurrection, tumult or riot exists in any part of the State or that the execution of civil or criminal process has been forcibly resisted by

> bodies of men, or that any conspiracy or combination exists to resist by force the execution of such process, or that the officers of any county or city are unable or have failed for any reason to enforce the laws, he may, by proclamation, declare any part of the State or the county or city or any portion thereof to be in a state of insurrection, and he may thereupon order into the service of the State such number and description of the active militia, or unorganized militia, as he deems necessary, to serve for such term and under the command of such officer as he directs." (§143)

The defense seriously doubts that the State will establish (i) that an appropriate official under Military and Veteran's Code §146(d) requested the Governor's assistance or (ii) that the Governor published any proclamation pursuant to §143, or (iii) that the Governor called out the militia or in any lawful manner assumed authority over the officers at Sproul Hall, all of which elements are necessary to justify the Governor's actions. Accordingly, since all of the officers at Sproul Hall were carrying out the unauthorized and unlawful instructions of the Governor none of them was engaged in the "discharge of the duties of his office" as is necessary for a conviction of any of the defendants under Penal Code §148.

Finally, a large number of the police at Sproul Hall deliberately removed their badges from their uniforms to avoid identication by badge number and then proceeded viciously to kick, beat, and club many of the students. It is respectfully submitted that the removal of the police badge constituted a

symbolic gesture -- understood as such by the students -- that the policeman without a badge was acting not as a public officer in discharge of the duties of his office but as a bully engaged solely in a sadistic frolic and detour of his own. Accordingly, defendants cannot be convicted under §148 of resisting, delaying, or obstructing any officer who removed his badge.

V

MANY DEFENDANTS WERE NOT INFORMED BY THE ARRESTING OFFICER OF THE NATURE OF THEIR OFFENSE AND OF HIS INTENTION TO ARREST THEM

It is thoroughly settled that before a person may be guilty of resisting arrest he must be informed by the arresting officer (i) of the nature of his offense and (ii) of the officer's intention to arrest him at that time.

> Johnson v. Commonwealth, 42 S.W.2d 341, 240 Ky. 337 (1931);
>
> McGeorge v. Commonwealth, 35 S.W.2d 530, 237 Ky. 358 (1931);
>
> State v. Beckendorf, 10 P.2d 1073, 1076, 79 Utah 360 (1932).

Accordingly, the State must establish beyond a reasonable doubt, as to each defendant, that such defendant was informed at the time of his arrest of the nature of his offense and of the arresting officer's intention immediately to arrest him.

VI

NONE OF THE DEFENDANTS WERE ADVISED, OR AWARE, THAT THEY WERE TO BE CHARGED WITH RESISTING, DELAYING OR OBSTRUCTING THE DISCHARGE OF ANY "DUTY" OF A PUBLIC OFFICER OTHER THAN RESISTING, DELAYING OR OBSTRUCTING THEIR ARRESTS.

Defense counsel and defendants do not know, even at the present time, what "duties" of a public officer or officers it is that they are charged with resisting, delaying or obstructing, other than the charge of resisting arrest. Certainly, none of the defendants were advised that this charge might be brought against them at the time of their arrest.

Section 148, by its terms, proscribes only resistance, delay, or obstruction which is willfully done.

Accordingly, just as any defendant charged with resisting arrest is entitled to have been informed at the time of his arrest of the nature of the charges against him and the officer's intention to arrest him at that time (see cases cited in Point V above), it is respectfully submitted that no defendant can be charged under §148 with resisting, delaying, or obstructing a public officer in the discharge of any other duty of his office unless, at the time of the offense, such defendant was advised, or otherwise clearly aware, of the precise nature of the "duty" involved.

Any lesser standard would deprive defendants of fair notice of the line of demarcation between lawful conduct and criminal conduct to which they are constitutionally entitled.

Lanzetta v. New Jersey, 306 U.S.451;

United States v. Cardiff, 334 U.S. 174 (1952)

In re Newborn, 53 C.2d 786, 3 Cal. Rptr. 364 (1960);

People v. McCoughan, 49 C.2d 409, 317 P.2d 974 (1957);

Katzev v. Los Angeles, 52 C2d 360, 341 P.2d 310 (1959).

FEB 1 1 1965

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New York, New York

Dear Carl:

Thank you for your letter of February 9. Please look over our motions and come in amicus on whatever constitutional question you consider appropriate. Procedurally we have two to four weeks before a writ will be filed and briefs needed. Perhaps you can get NAACP and/or the "Incorporated Fund" to come in also.

Please let me know.

Warm personal regards,

Mal

Mal Burnstein,
Secretary

Call HS 3/1 - 10:11 tm

Hammie
Henry's will call, hopefully, with a lawyer who will work on the enclosed. Please tell H.S. whoever works in this must keep in touch with me on this. Thanks
CC

3/17/65 Lewis Stern doing this instead (see file

Lawyers Constitutional Defense Committee, Inc.

Ninth Floor, 156 Fifth Avenue, New York, N. Y. 10010

(212) YU 9-7530

MAR 8 1965

~~Lewis Stern~~ Strauss ~~Spiegelberg~~ is doing it

President
LEO PFEFFER
Special Counsel
American Jewish Congress

Vice-Presidents
JOHN M. PRATT
Counsel, Commission on Religion and Race
National Council of the Churches of Christ

CARL RACHLIN
General Counsel
Congress of Racial Equality

Secretary
MELVIN L. WULF
Legal Director
American Civil Liberties Union

Treasurer
EDWIN J. LUKAS
National Affairs Director
American Jewish Committee

ROBERT L. CARTER
General Counsel
National Association for the Advancement of Colored People

The Rev. ROBERT F. DRINAN, S.J.
Dean
Boston College Law School

JACK GREENBERG
Director-Counsel
NAACP Legal Defense and Educational Fund

CLARENCE B. JONES
Counsel to the Rev. Dr. Martin Luther King, Jr.

HOWARD MOORE, JR.
Counsel
Student Non-violent Coordinating Committee

Executive Secretary
HENRY SCHWARZSCHILD

Staff Counsel
ALVIN J. BRONSTEIN
603 North Farish Street
Jackson, Mississippi 39202
(601) 948-4191

COPY

For your info. HS.

March 5, 1965

Ralph Werner, Esq.
200 Park Avenue
New York, N.Y.

Re: California v. Savio et al.

Dear Ralph:

Both your willingness to take on this chore and especially the spirit in which you do so are really very heartening.

Herewith enclosed are:

1. Free Speech Defense: Three Documents, containing the demurrer, motion for pretrial hearing, and preliminary statement of issues for the pretrial, in the case.

2. Memorandum from CORE Legal Department on Resisting Arrest, with some special reference to California law (see esp. p. 11).

3. Memorandum of Law on the Connecticut law of resisting arrest.

4. Memorandum on California Penal Code Sections 409 and 726.

5. Petition for Cert. in Green v. Louisiana, which involved resistance to arrest, though rather marginally.

Most useful, obviously, should be items # 1 and 2, but I thought I'd give you what I have collected in the past day or two.

Here's the situation: Malcolm Burnstein is the CORE lawyer in California who is heading the legal defense team for the Free Speech Movement defendants. He is at 1440 Broadway, Oakland, (415) GL 2-1303. Of the 700 defendants, some 90 have nolo'ed out, and the first group of about 150 are coming to trial on April 1. Mal needs a trial brief, no less than ten days before the trial date, specifically on the Section 148 (resisting arrest) problem. You are, of course, welcome to be in touch with Mal directly, but also let me know, if you will, how you're coming along. We're very grateful to you!

Cordially,

Henry Schwarzschild
Executive Secretary

Law Offices of
TREUHAFT & WALKER
1440 BROADWAY (NINTH FLOOR) • OAKLAND 12, CALIFORNIA • GLENCOURT 2-1303

ROBERT E. TREUHAFT
DORIS BRIN WALKER
MALCOLM BURNSTEIN

San Francisco Office:
McMURRAY & TEPPER
228 McALLISTER STREET
MARKET 6-1828

100

Sari'o
make a copy & put in Chet Duncan file

APR 23 1965

April 21, 1965

Mr. Carl Rachlin
General Counsel
CORE
38 Park Row
New York 38, New York

Dear Carl:

Sorry for the delay in this letter but I did dictate a letter to you earlier which never, for some reason which I cannot fathom, got out of the office. I have in fact received the memorandum from Lou Stern and find it extremely helpful and useful. Trial is now in its third week with the prosecution's case about two-thirds of the way in. We have found Mr. Stern's memorandum very helpful to use in cross-examination of police witnesses on the question of resisting arrest. I have already sent him a letter thanking him butplease do so on my behalf additionally if you should see him. Let me say too, that I certainly appreciate your help in obtaining that memorandum for me.

As to the matter of Chet and the car I am pleased to say that Chet is now making payments to me to make up some of the back money which is out on the car. Additionally I have been able to lease the car out to somebody else for five months and so do not have additional costs piling up. I expect at the end of the five month period that Chet will be all paid up to me on the back money but we will then have the problem of the car again. Chet wants it back and I am quite willing to give it to him under certain terms and conditions including his continued insurance and his payment on the car through me each month. Chet does seem to be making a real attempt to rehabilitate himself and I certainly want to assist in that process.

I was very sorry not to have been able to make the last conference but, as you well know things are quite hectic around here. I hope that I can indeed see you soon and would welcome your visit out here. Since the sit-in trials started I have not had too much time for the affairs of the Regional Office of CORE and hope that no serious problems have arisen there. I have, however, been quite busy with CORE

chapters in the East Bay, especially Oakland and Campus chapters who have been taking up my week-ends with picketing and future civil disobedience problems. As a matter of fact their East Bay restaurant project should reach the level of civil disobedience by April 23rd.

When are you coming out here.

Very truly yours,

Mal

Malcolm Burnstein

MB:bs
oteu#29
afl-cio

Box 448
Berkeley 1, California
3 November 1965

Congress On Racial Equality
38 Park Row
New York City, New York 10038

Dear Friends:

I write to ask you to consider very seriously filing a friend of the court brief in our current appeal of the University of California December 1964 Sit-in Case. That appeal is now starting and will raise questions of the right to protest for transcending the confines of the University campus. Our enclosed Statement on Appeal will outline the issues.

If your organization is interested in joining the appeal, I will furnish much more complete information on any point desired. We envision that our opening brief will be filed in December of this year.

Please join our mutual fight.

Very truly yours,

Malcolm Burnstein

Malcolm Burnstein
for the Lawyers for the
U.C. Defendants

Enc. Statement on Appeal
Malcolm Burnstein
1440 Broadway
Oakland, California

MSS SEDFRE
546

Senger, Harry L. Jr. et al vs Elliott, David L et al
& Vesta Co. vs. David, Charles — Jan-Sept, 1963
(2 related cases involving Housing Discrimination)

State Historical Society of Wisconsin

Please Retain Original Order

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION : BERGEN COUNTY

VESTA CO., a New Jersey corporation, Plaintiff,	)	
vs.	)	CIVIL ACTION
DELIA DAVID and CHARLES DAVID, her husband, Defendants.	)	COMPLAINT

Plaintiff, a corporation of the State of New Jersey, says:

1. Plaintiff is entitled to thepossession of a tract of land, with the appurtenances, situated in the Borough of Edgewater, Bergen County, New Jersey, more particularly described as follows:

BEGINNING at the point where the westerly side line of River Road intersects the southwesterly side of Dempsey Avenue, thence running (1) North 42 degrees 49 minutes and 30 seconds west 86.32 feet along the southwesterly line of Dempsey Avenue to a point 0.27 of a foot easterly of the northeast corner of a three story brick building; thence (2) south 46 degrees 3 minutes and 20 seconds west 28.56 feet to a point; thence (3) south 41 degrees 56 minutes 50 seconds east 93.79 feet to a point in the westerly side of River Road 31.11 feet from the place of beginning; thence (4) north 32 degrees 15 minutes east 31.11 feet along the westerly side of River Road to the point or place of beginning. Premises No. 938 River Road, a/k/a 2 Dempsey Avenue, Edgewater, New Jersey,

and more particularly a six-room apartment designated as the third floor front in the premises immediately above described.

2. Plaintiff's right to possession of the said premises accrued on November 1st, 1961.

3. The defendants have, since December 12, 1962, deprived plaintiff of the possession of said premises.

WHEREFORE, Plaintiff demands judgment against the defendants:

A. For possession of said premises.

B. For damages for mean profits.

C. For costs.

MAJOR & MAJOR
Attorneys of Plaintiff

(S) James A. Major
By:
James A. Major, Partner

31 - N. J. SUMMONS - SUPERIOR COURT
RULE 4:12-1 (a)

ALL-STATE OFFICE SUPPLY CO.
49 EDISON PLACE, NEWARK 2, N. J.

VESTA CO., a New Jersey corporation,

Plaintiff,

vs.

DELIA DAVID and CHARLES DAVID, her husband,

Defendants.

Superior Court of New Jersey

LAW Division

BERGEN County

Docket No. L-9165-62

CIVIL ACTION

Summons

The State of New Jersey

to

(L.S.) DELIA DAVID and CHARLES DAVID, her husband, 2 Dempsey Avenue Edgewater, N.J.

YOU ARE HEREBY SUMMONED in a Civil Action in the Superior Court of New Jersey, instituted by Vesta Co., a New Jersey corporation, *, plaintiff, and required to serve upon* Major & Major, Esquires, 241 Main Street, Hackensack, New Jersey *, attorney for the plaintiff, an answer to the complaint, a copy of which is herewith served upon you, within* 20 *days after the service of the summons upon you, exclusive of the day of service. If you fail to do so, judgment by default may be rendered against you for the relief demanded in the complaint. You shall file your answer and proof of service in duplicate with the Clerk of the Superior Court, State House Annex, Trenton, New Jersey, in accordance with the rules of civil practice and procedure.*

Dated: January 9th, 1963.

(S) I. Grant Scott
I.Grant Scott
Clerk of the Superior Court

Serve

Superior Court of New Jersey
Law Division
Bergen County
Docket No. L-9165-62

VESTA CO., a New Jersey corporation,

Plaintiff,

vs.

DELIA DAVID and CHARLES DAVID, her husband,

Defendants.

CIVIL ACTION
Summons

MAJOR & MAJOR
Attorneys of Plaintiff
241 Main Street
Hackensack, N.J.

SERVED
DATE 1/12/63

RECEIVED IN
BERGEN COUNTY
SHERIFF'S OFFICE
JAN 10 10 36 AM '63
MARTIN J. FERBER
SHERIFF
HACKENSACK, N. J.

31 - N. J. SUMMONS - SUPERIOR CC
RULE 4:12-1 (a)

ALL-STATE OFFICE SUPPLY CO.
49 EDISON PLACE, NEWARK 2, N. J.

HENRY C. SENGER, JR., et al

Plaintiff s,

vs.

DAVID L. ELLIOTT et al

Defendant s.

Superior Court of New Jersey

Law *Division*

Bergen *County*

Docket No. C-1147-62

CIVIL ACTION

Summons

The State of New Jersey

to DAVID L. ELLIOTT and SALLY ELLIOTT, his wife; BYRON BAER, DELIA DAVID and CHARLES DAVID, her husband, NAHUM BACHRACH, and CONGRESS OF RACIAL EQUALITY, an unincorporated entity.

(L.S.)

YOU ARE HEREBY SUMMONED in a Civil Action in the Superior Court of New Jersey, instituted by Henry C. Senger, Jr., et al *, plaintiff s ,*

and required to serve upon Major & Major, Esquires, 241 Main Street, Hackensack, N.J. *, attorney s for the plaintiff s , an answer to the complaint, a copy of which is herewith served upon you, within* 20 *days after the service of the summons upon you, exclusive of the day of service. If you fail to do so, judgment by default may be rendered against you for the relief demanded in the complaint. You shall file your answer and proof of service in duplicate with the Clerk of the Superior Court, State House Annex, Trenton, New Jersey, in accordance with the rules of civil practice and procedure.*

Dated: January 14th, 1963.

(S) I. Grant Scott

Clerk of the Superior Court

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION : BERGEN COUNTY

HENRY C. SENGER, JR., JOSEPH T. PANUCCI and JOHN LOWE,	)	
Plaintiffs,	)	
vs.	)	
DAVID L. ELLIOTT and SALLY ELLIOTT, his wife, BYRON BAER, DELIA DAVID and CHARLES DAVID, her husband, NAHUN BACHRACH and CONGRESS OF RACIAL EQUALITY, an unincorporated entity,	)	CIVIL ACTION COMPLAINT
Defendants.	)	

FIRST COUNT, Being the Complaint of Henry C. Senger, Jr.

1. This plaintiff resides in the Village of Ridgewood, Bergen County, New Jersey.

2. On or about December 12, 1962, this plaintiff, with Joseph T. Panucci and John Lowe, owned all of the stock in a corporation known as Vesta Co., a New Jersey corporation.

3. The said corporation owned real property located at No. 2 Dempsey Avenue, Edgewater, Bergen County, New Jersey, which is a building containing apartments and stores.

4. On December 12, 1962 one of the apartments in the said premises was vacant, the said apartment being designated as the front apartment on the third floor, consisting of six rooms.

5. On the said day, the defendants herein confederated, conspired, and agreed to take possession, and retain possession, of the said apartment, by force and arms, and in pursuance to the said conspiracy agreed that any attempt by the corporation which owned the said property to regain possession would be met with force and defamatory statements respecting this plaintiff and the other stockholders in the said corporation.

6. (a) In furtherance of the said agreement, confederation, and conspiracy, the defendant, Delia David, on December 13, 1962, informed the superintendent in charge of the said building that she was interested in renting the said premises, and after examining them, requested the defendant, Sally Elliott, to also examine said premises on the feigned purpose that the said Sally Elliott was seeking to rent the premises, and thereupon the said Sally Elliott gave to the superintendent a $10.00 deposit as a token of good faith, and informed the superintendent that she would be back with her husband to give a deposit of one month's rent, or $100.00, as security.

(b) On December 13, 1962, the said Sally Elliott returned with a man she introduced to the said superintendent as her husband, but who was in fact the defendant, Byron Baer, and the said defendants purported to re-examine the said apartment, and thereupon forced their way into the said apartment and admitted some 6 to 8 persons, and informed the superintendent that they would remain in possession and demanded that the superintendent telephone this plaintiff.

(c) Before the said Byron Baer came to the premises, as above stated, he informed the Associated Press and other news agencies, that a sit-in was taking place at the property at 2 Dempsey Avenue, Edgewater, New Jersey, because the owners thereof were anti-negro.

(d) On the said December 13, 1962, Byron Baer informed this plaintiff that possession of the premises would be maintained despite any and all requests that the persons then in possession remove themselves.

(e) Thereupon, and on or about December 13, 1962, persons began picketing the said premises, bearing signs stating that the owners of said building, including

this plaintiff, were anti-negro and the said defendants issued statements to the public press making the said charges.

(f) On or about December 15, 1962, pickets appeared at the home of this plaintiff in Ridgewood, New Jersey, approximately 7 in number, carrying placards to the effect that negroes needed housing and that the owners of the premises at 2 Dempsey Avenue, Edgewater, New Jersey, including this plaintiff, were anti-negro.

(g) On or about December 18, 1962, approximately 15 women and children, some pushing baby carriages, appeared in front of this plaintiff's home at the instigation and request of the defendants herein, carrying signs to the effect that this plaintiff was anti-negro, and at the same time and place a radio station was represented and took an interview with the defendant, Baer, and others, concerning this plaintiff's alleged anti-negro views, and the said Baer, at the aforesaid time and place, had arranged for a photographer and reporter for Life Magazine, a national periodical, to be present, and these activities were done for the purpose of giving national circulation to the charge that this plaintiff was anti-negro.

(h) On or about the same day, the defendants caused pickets to appear at the plaintiff's place of employment, Curtiss-Wright, Wood Ridge, New Jersey, and their distributed circulars purporting to state that this plaintiff was anti-negro, had refused housing accommodations to a negro family in need, and also distributed a pamphlet headed up "Scrooge 1962???", which purported to be a plea to the conscience of this plaintiff to end racial discrimination in the apartment house at 2 Dempsey Avenue, Edgewater, New Jersey, and by the said pamphlet charged that this plaintiff was guilty of racial discrimination.

(i) Still in pursuance of the said conspiracy, the said Delia David caused a complaint to be made, on or about December 18, 1962, to the Division on Civil Rights of the Department of Education, and thereafter the said defendants caused to be circulated to the public press notices to the effect that the said proceedings had been initiated, and that if steps were taken to eject the defendants, David, from the premises in question, picketing would be resumed, and in the said press releases the said defendants again reiterated their charges that this plaintiff was anti-negro and practiced racial discrimination in housing, contrary to law.

(j) On or about December 19, 1962, defendants, David, moved their furniture physically into said apartment and have remained in possession ever since although requested to move.

(k) The said defendant, Baer, in order to provide telephone service for the defendants, David, caused the telephone company to list the telephone in his name; and the defendants, Elliott, in order to obtain utility services for the defendants, David, caused the utilities to be listed in their name.

7. The result of the said activities is to invade plaintiff's right of privacy and to hold him up to contempt and ridicule, and to prevent him from taking such proceedings as are available to the corporation, of which he is a stockholder, to recover possession of the premises in question, and to prevent further acts of violence by these defendants and those acting on their behalf.

8. On information and belief, the defendant, Congress of Racial Equality, is an unincorporated entity, but consists of more than 9 persons, and the defendants, Baer and Elliott and Bachrach, purport to be the spokesman

for the said defendant, Congress of Racial Equality.

WHEREFORE, This plaintiff asks judgment:

A. For damages, compensatory and punitive.

B. Restraining the said defendants, and each and every one of them, from picketing the premises at 2 Dempsey Avenue, Edgewater, New Jersey, his home at Ridgewood, New Jersey, and his place of employment at Wood Ridge, New Jersey.

SECOND COUNT, Being the Complaint of Joseph T. Panucci.

1. This plaintiff resides in Ridgewood, New Jersey, and is a member of the Bar of the State of New Jersey, and has his office in Ridgewood, New Jersey.

2. He makes part hereof, the same as though set forth herein at length, all of the allegations of the First Count.

3. In addition to the allegations contained in the First Count, this plaintiff alleges that on or about December 17, 1962 some 4 persons, instigated by these defendants, appeared in front of the building in Ridgewood where he maintains his law office, and they were bearing signs to the effect that he was anti-negro and guilty of racial discrimination.

4. On December 19, 1962 at about 9:30 P.M., a group of some 6 persons, instigated by defendants appeared at his home carrying candles and singing Christmas carols in an ironic fashion, and carrying signs indicating that he was anti-negro and guilty of racial discrimination.

WHEREFORE, This plaintiff asks judgment:

A. For damages, compensatory and punitive.

B. Restraining the said defendants, and each and every one of them, from picketing the premises at 2 Dempsey Avenue, Edgewater, New Jersey, his home at Ridgewood, New Jersey, and his office at Ridgewood, New Jersey.

RECEIVED IN
THIRD COUNTY
SHERIFF'S OFFICE
JAN 15 11 19 AM '63
MARTIN J. FERBER
SHERIFF
HACKENSACK, N. J.

THIRD COUNTS, being the Complaint of John Lowe.

1. This plaintiff resides in Ridgewood, New Jersey.

2. He makes part hereof, the same as though set forth herein at length, all of the allegations of the First and Second Counts.

3. On December 19, 1962 these defendants, or persons instigated by them, appeared at the home of this plaintiff at about 8:30 P.M. carrying candles and singing Christmas carols, in an ironic fashion, and carrying signs indicating that this plaintiff was anti-negro and guilty of racial discrimination.

DYLE
SERVED

WHEREFORE, This plaintiff asks judgment;

A. For damages, compensatory and punitive.

B. Restraining the said defendants, and each and every one of them, from picketing the premises at 2 Dempsey Avenue, Edgewater, New Jersey, and his home at Ridgewood, New Jersey.

MAJOR & MAJOR
Attorneys of Plaintiffs

By: (S) James A. Major,
Partner

The plaintiffs in the above entitled cause hereby demand a trial of all of the issues of this cause by jury.

MAJOR & MAJOR
Attorneys of Plaintiffs

By: (S) James A. Major,
Partner

ORIGINAL

DILLAVOU AND COX
611 Wilshire Boulevard
Los Angeles 17, California
MAdison 6-6541

Attorneys for Defendants
and Cross-Complainants

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

JAMES H. MC LENNAN and DORIS J. MC LENNAN, Plaintiffs, v. BANNING GARDENS, a limited partnership, et al., Defendants.	NO. 807730 Action brought in the Superior Court of the County of Los Angeles, and Cross-Complaint filed in the Office of the Clerk of the Superior Court of said County.
VIXLER CORPORATION, a California corporation, sole general partner doing business under the firm name of BANNING GARDENS, a limited partnership, Cross-Complainants, v. JAMES H. MC LENNAN and DORIS J. MC LENNAN, et al., Cross-Defendants.	SUMMONS on Cross-Complaint

THE PEOPLE OF THE STATE OF CALIFORNIA SEND GREETINGS TO:

JAMES H. MC LENNAN, DORIS J. MC LENNAN, HELEN M. WILSON, HOMER R. WILSON, CHARLOTTE ALIKAS, ROBERT ALIKAS, LUTHERN BELL, CLARENCE C. BERRARD, JR., CHARLES HENRY BOOTH, RICHARD BROOKS, WOODROW COLEMAN, TOMMY H. CURRY, M. ARLANDERS EUWINGS, PATRICIA EVERHART, LUISA MAY GRATZ, FLEMMING DANIEL GRAY, JR., MARI GOLDMAN, ALFRED EDWIN HENDREW, FRANK ALLEN HERZOG, ROBERT A. JACKSON, ROBERT LEE JEFFERSON, EARNESTINE T. JOHNSON, GEORGE F. KILLINGSWORTH, WILBUR C. LOWE,

Copy

RONALD PETER LA BOSTRIE, HUBERT SIMON MANN, MABEL JEAN MOORE, GEORGE NICHOLAS, ROBERTA LILA NICHOLSON, MARSHA ROTKIN, ROBERT F. SANDERS, BERNARD L. SAPIRO, EARL WALTER, JULIAN W. WASSER, CLINTON WHITSETT AND DOES I, II, III, IV, V, VI, VII, VIII, IX, X, XI, XII, XIII, XIV, XV, XVI, XVII, XVIII, XIX, XX, XXI, XXII, XXIII, XXIV, XXV, individually and associated under the common name of CONGRESS OF RACIAL EQUALITY, an unincorporated association, CONGRESS OF RACIAL EQUALITY, an unincorporated association and DOES XXVI, XXVII, XXVIII, XXIX, XXX, XXXI, XXXII, XXXIII, XXXIV, XXXV, XXXVI, XXXVII, XXXVIII, XXXIX, XL, XLI, XLII, XLIII, XLIV, XLV, XLVI, XLVII, XLVIII, XLIX L, Cross-Defendants.

You are directed to appear in an action brought against you by the above named Cross-Complainants in the Superior Court of the State of California for the County of Los Angeles, and to answer the Cross-Complaint therein within ten days after the service on you of this Summons, if served within the County of Los Angeles, or within thirty days if served elsewhere, and you are notified that unless you appear and answer as above required, the Cross-Complainants will take judgment for any money or damages demanded in the Cross-Complaint, as arising upon contract, or will apply to the Court for any other relief demanded in the Cross-Complaint.

Given under my hand and seal of the Superior Court of the State of California for the County of Los Angeles, this _____ day of NOV 20 1962, 1962.

(SEAL SUPERIOR COURT LOS ANGELES COUNTY)

WILLIAM G. SHARP, County Clerk and Clerk of the Superior Court of the State of California for the County of Los Angeles.

By [signature] Deputy.
K. MACHEN

APPEARANCE: "A defendant appears in an action when he answers, demurs, files a notice of motion to strike, or gives the plaintiff written notice of his appearance, or when an attorney gives notice of appearance for him." (Sec. 1014, C.C.P.)

Answers, demurrers, notices of motion to strike, and written notices of appearance, must be in writing, in form pursuant to rule of court, accompanied with the necessary fee, and filed with the Clerk.

DILLAVOU AND COX
611 Wilshire Boulevard
Los Angeles 17, California
MAdison 6-6541

Attorneys for Defendants and
Cross-Complainants

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

JAMES H. McLENNAN and DORIS J. McLENNAN, Plaintiffs, vs. BANNING GARDENS, a Limited Partnership, et al, Defendants.	No. 807730
VINNER CORPORATION, a California Corporation, sole general partner doing business under the firm name of BANNING GARDENS, a Limited Partnership, Cross-Complainant vs. JAMES H. McLENNAN, DORIS J. McLENNAN, HELEN M. WILSON, HOMER R. WILSON, CHARLOTTE ALIKAS, ROBERT ALIKAS, LUTHERN BELL, CLARENCE C. BERRARD, JR., CHAS. HENRY BOOTH, RICHARD BROOKS, WOODROW COLEMAN, TONEY H. CURRY, M. ARLANDERS BUNINGS, PATRICIA EVERHART, LUISA MAY GRATZ, FLEMMING DANIEL GRAY, JR., MARI GOLDMAN, ALFRED EDWIN HENDREW, FRANK ALLEN HERZOG, ROBERTA JACKSON, ROBERT LEE JEFFERSON, ERNESTINE T. JOHNSON, GEORGE F. KILLINGSWORTH, WILBUR C. LOWE, RONALD PETER LA BOSTRIE, HERBERT SIMON MANN, MARNI JEAN MOORE, GEORGE NICHOLAS, ROBERTA LILA NICHOLSON, MARSHA RODKIN, ROBERT F. SANDERS, BERNARD L. SAPIRO, EARL WALTER, JULIAN W. WASSER, CLINTON WHITSETT and DOES I, II, III, IV, V, VI, VII, VIII, IX, X, XI, XII, XIII, XIV, XV, XVI, XVII, XVIII, XIX, XX, XXI, XXIII, XXIV,	CROSS-COMPLAINT

XXV, individually and associated under the common name of CONGRESS OF RACIAL EQUALITY, an unincorporated association, CONGRESS OF RACIAL EQUALITY, an unincorporated association and DOES XXVI, XXVII, XXVIII, XXIX, XXX, XXXI, XXXII, XXXIII, XXXIV, XXXV, XXXVI, XXXVII, XXXVIII, XXXIX, XL, XLI, XLII, XLIII, XLIV, XLV, XLVI, XLVII, XLVIII, XLIX, L,

Cross-Defendants

CROSS-COMPLAINANT and DEFENDANT, HEREINAFTER REFERRED TO AS CROSS-COMPLAINANT, FOR A CAUSE OF ACTION AGAINST CROSS-DEFENDANTS ALLEGES THAT:

I

VIKLER CORPORATION is and at all times herein mentioned was a corporation duly organized and existing under and by virtue of the laws of the State of California.

II

At all times herein mentioned, cross-complainant VIKLER CORPORATION was and now is the sole general partner of a limited partnership doing business under the fictitious firm name of BANNING GARDENS and has filed the certificate and published the notice required by Sections 2466 and 2468 of the Civil Code of California and has recorded in the office of the recorder of the County of Los Angeles the certificate of limited partnership required by Section 15502 of the Code of Civil Procedure.

III

Cross-Complainant is informed and believes and upon such information and belief alleges that at all times herein mentioned, cross-defendants JAMES H. MOLENMAN, CORTE J. MOLENMAN, HELEN M. WILSON, HOMER R. WILSON, CHARLOTTE ALIRAS, ROBERT ALIRAS, LUTHERN BELL, CLARENCE C. BERNARD, JR., CHAS. HENRY BOOTH, RICHARD BROOKS, WOODROW COLEMAN, TOMMY H. CURRY, M. ARLANDERS EUNINGS, PATRICIA EVERHART, LUICA MAY GRATZ, FLEMMING DANIEL GRAY, JR., MARI GOLDMAN, ALFRED EDWIN HENDERSON, FRANK ALLEN HERROD, ROBERTA JACKSON, ROBERT LEE JEFFERSON, ERNESTINE

T. JOHNSON, GEORGE F. KILLINGSWORTH, WILBUR C. LOWE, RONALD PETER LA BOSTRIE, HERBERT SIMON MANN, MABEL JEAN MOORE, GEORGE NICHOLAS, ROBERTA LILA NICHOLSON, MARSHA ROTKIN, ROBERT F. SANDERS, BERNARD L. SAPIRO, EARL WALTER, JULIAN W. WASSER, CLINTON WHITSETT, and DOES I, II, III, IV, V, VI, VII, VIII, IX, X, XI, XII, XIII, XIV, XV, XVI, XVII, XVIII, XIX, XX, XXI, XXII, XXIII, XXIV, XXV, were, and now are, associated with each other under the common name of CONGRESS OF RACIAL EQUALITY, hereinafter sometimes referred to as "C.O.R.E.", and cross-complainant sues said associates by their said common name as well as in their respettive and several individual capacities.

IV

Cross-complainant has at all times mentioned herein been engaged in the real estate business as a tract developer and has at all times mentioned herein been the owner, possessor and occupant of that certain real property described as Tract No. 25425, City of Wilmington, County of Los Angeles, State of California. More specifically, cross-complainant has at all times mentioned herein been the owner, possessor and occupant of Lot 55 of said tract, and the improvements constructed thereon commonly known as 1571 Baypoint Avenue, City of Wilmington, County of Los Angeles, State of California, which lot and improvements are sometimes hereinafter referred to as the "Baypoint House".

Said tract was purchased and subsequently subdivided by cross-complainant into some 148 lots upon which cross-complainant caused to be constructed individual residences. Since the time of completion of said residences, cross-complainant, through its independent sales brokers, has been making sales thereof to the general public. The Baypoint House has been offered for sale but as yet has not been sold.

V

Cross-defendants DOES I, II, III, IV, V, VI, VII, VIII,

IX, X, XI, XII, XIII, XIV, XV, XVI, XVII, XVIII, XIX, XX, XXI, XXII, XXIII, XXIV, XXV and cross-defendants DOES XXVI, XXVII, XXVIII, XXIX, XXX, XXXI, XXXII, XXXIII, XXXIV, XXXV, XXXVI, XXXVII, XXXVIII, XXXIX, XL, XLI, XLII, XLIII, XLIV, XLV, XLVI, XLVII, XLVIII, XLIX, and L are sued herein under their fictitious names, their true names and capacities, whether corporations, associations, or individuals being unknown to cross-complainant, and at such time as the correct names and capacities of said cross-defendants have been ascertained cross-complainant will ask leave of court to amend this cross-complaint accordingly.

VI

On or about May 6, 1962, cross-defendants JAMES A. McLENNAN and DORIS J. McLENNAN entered into an agreement with Banning Gardens to purchase the Baypoint house, a copy of which agreement is attached hereto, marked Exhibit No. 1, and hereby referred to and incorporated herein with the same force and effect as if set forth at length herein. Said agreement provided, among other things, that said cross-defendants should forthwith make application to a lending institution selected by Banning Gardens for a "Veterans Guaranteed Loan" on said property in an amount not less than the balance of the purchase price. Said agreement further provided that in the event said cross-defendants were rejected by the lending institution or by the Veterans Administration, the transaction should be considered null and void and all sums paid or deposited by said cross-defendants should be refunded.

Banning Gardens thereafter selected Home Savings and Loan Association of Los Angeles as the lending institution, and, on or about July 6, 1962, cross-defendants JAMES H. McLENNAN and DORIS J. McLENNAN executed an application to said Home Savings and Loan Association for a real estate loan on the Baypoint house and signed Veterans Administration escrow instructions in connection therewith. Said escrow instructions provided, among other things, that the

escrow was subject to and contingent upon cross-defendant JAMES A. McLENNAN qualifying for a Veterans Administration guaranteed loan.

On or about July 6, 1962, cross-defendant JAMES A. McLENNAN made application to the Veterans Administration for a loan guaranty on said Baypoint house. On or about October 3, 1962, said Veterans Administration notified Home Savings and Loan Association that said application was declined. Thereafter, to-wit, on October 4, 1962, said Home Savings and Loan Association notified cross-defendants JAMES A. McLENNAN and DORIS J. McLENNAN of the rejection of the Veterans Administration loan guarantee. Banning Gardens subsequently refunded to said cross-defendants the $25.00 initial deposit made by them on or about May 6, 1962.

VII

At a time prior to October 10, 1962, cross-defendants, and each of them, agreed and conspired together to commit and in furtherance of said agreement and conspiracy, without color of title or right, justification, privilege or excuse did willfully and maliciously commit the acts hereinafter set forth.

On or about October 10, 1962, cross-defendant HELEN M. WILSON represented to the tract salesman that said cross-defendant and her husband, cross-defendant HOMER R. WILSON, were interested in purchasing the Baypoint house and that cross-defendant HOMER R. WILSON would come by the weekend next ensuing to inspect said house with a view towards purchasing same. Said representations, and each of them, were false. Thereafter, to wit, on or about October 14, 1962, cross-defendant HOMER R. WILSON appeared at cross-complainant's tract sales office and requested the keys to the Baypoint house representing that he wanted to inspect same to see if he liked it and that he would return the keys shortly. Said representations were false. The tract salesman thereupon gave said keys to said cross-defendant who immediately went to the Baypoint house, and, together with a number of other cross-defendants, and other

persons whose exact identities are unknown to cross-complainant and not capable of ascertainment, willfully and maliciously entered upon said house; moved therein several items of furniture, consisting primarily of beds, cots, mattresses and blankets, together with clothes and food; ordered the furnishing of gas, electricity, water and telephone service for said house; and proclaimed to the neighboring residences in said Tract and to the general public that said cross-defendants and other persons were conducting a "C.O.R.E. Dwell-In", erecting a sign to that effect in front of said house.

From and after said date, said cross-defendants, and each of them, aided and abetted by a number of other persons, whose exact identities are not known to cross-complainant and not capable of ascertainment, openly, continually and exclusively occupied said Baypoint house making around-the-clock shifts in the personnel established therein, until when, on October 23, 1962, a number of said cross-defendants were arrested. On several occasions thereafter cross-defendants and said other persons returned to said Baypoint house and willfully and maliciously entered upon and occupied the real property of cross-complainant surrounding said house. They were arrested on each of such occasions, the last of the four arrests taking place on November 3, 1962.

VIII

On October 14, 1962, and at various times thereafter, up to and including November 3, 1962, cross-complainant requested and demanded that said cross-defendants and each of them, vacate said Baypoint house and the real property surrounding same and return the possession thereof to cross-complainant but said cross-defendants, and each of them, refused so to do.

IX

By reasons of the acts of the cross-defendants above alleged, said cross-defendants, and each of them, deprived cross-complainant of the use and occupancy of said Baypoint house for

the period October 10, 1962, to November 3, 1962, and prevented the showing and sale of said house by cross-complainant to others during said period. Cross-complainant is informed and believes and on such information and belief alleges that it could have sold said house during said period but for the acts of cross-defendants and that cross-complainant thereby has been deprived of a net profit on the sale of said house. Cross-complainant is also informed and believes and on such information and belief alleges it was deprived of net profits on the sale of other houses in said tract during said period in that, by reason of the acts of cross-defendants, prospective purchasers were dissuaded from purchasing said houses.

In addition, during said period, cross-complainant was obligated to pay and did pay interest, taxes and insurance in connection with the maintenance by plaintiff of its financial and other obligations on said house. Further, cross-defendants caused physical damage to the Baypoint house during the period of their occupancy.

Cross-complainant has thereby been damaged in an amount not less than $10,000.00 by reason of the acts of said cross-defendants. The exact amount of said damages, however, is not known to cross-complainant at this time and cross-complainant will ask leave to amend this cross-complaint when it ascertains said amount.

In committing the acts herein alleged, cross-defendants and each of them, acted maliciously and with wanton disregard of the rights of the cross-complainant and by reason thereof cross-complainant demands exemplary and punitive damages against said cross-defendants, and each of them, in the sum of $5,000.00.

WHEREFORE, cross-complainant prays judgment against cross-defendants, and each of them, as follows:

1. For the sum of $10,000.00 as compensatory damages and for such additional sums of damage as cross-complainant sustained or sustains by reason of the acts of cross-defendants.

2. For the sum of $5,000.00 as exemplary and punitive damages;

3. For costs of suit;

4. For such other and further relief as the Court may deem proper.

DILLAVOU AND COX

By /s/ Richard M. Norman

Richard M. Norman
Attorneys for Defendants
and Cross-Complainant

SALES AND PURCHASE AGREEMENT

Wilmington, California, May 6th, 1962

RECEIVED FROM James H. & Doris J. McLennan J/T
(Full name in which Title is to be taken) (Legal status)

hereinafter called "Buyer" the sum of $25.00 as deposit toward the purchase of Lot No. 55

Tract No. 25425, in the City of Wilmington, known as 1571 Bayswater Ave

together with single family residence constructed or to be constructed in accordance with plans and specifications as set forth in the house plans on file with the Veterans Administration and described as Plan No. .....

Subject to covenants, conditions, restrictions, reservations, easements, rights and rights of way of record and easements to be reserved by the Seller. Also subject to taxes for the current fiscal year prorated as of close of escrow.

Purchase price of property is to be $20,400.00, plus closing costs and impounds as follows:

House and Lot	$20,400.00
Loan Closing Costs	$
Impounds (Estimated)	$475.00
Optional Equipment	$
TOTAL	$20,875.00

CASH DOWN PAYMENT TO BE MADE AS FOLLOWS:

$25.00 receipt of which is hereby acknowledged.

$450 on or before possession	$475.00
Balance	$20,400.00

Buyer agrees to forthwith make application to a lending institution to be selected by the Seller for a Veterans Guaranteed Loan on the said property, for an amount not less than the balance of the purchase price, and agrees on demand to execute such other papers, documents, contracts, including escrow instructions, which may be necessary to complete this transaction.

The parties to this agreement understand that the Seller will undertake to make available to the Buyer a G. I. loan for the balance in the amount of $20,400.00, and the Seller agrees to refund the full amount of the deposit if such loan is not made available to the Buyer on the date set forth for completion of construction and delivery of title.

The estimated monthly payments of principal and interest on the loan of $20,400.00 will be $114.00 per month.

If the Buyer is rejected by the lending institution or by the Veterans administration, this transaction shall be considered null and void and all sums paid or deposited by the Buyer shall be refunded to him.

The Seller agrees to construct, complete, and deliver said house as per plans designated not later than....., however, such time being added as due to delay by any "Act of God", strike, labor dispute, or unavailability or shortage of materials necessary to complete said dwelling.

It is mutually agreed that the building will be built in accordance with plans and specifications on file with the Veterans Administration; and it is further understood that any changes in these plans and specifications must be approved by the Veterans Administration.

All streets, curbs, sidewalks, and other on-site and off-site improvements included in the plans and specifications on file with the Veterans Administration and upon which the reasonable value was established, will be installed and paid for by the Seller.

If Buyer elects to cancel this transaction, the Seller may, at its option, declare this contract null and void, and may retain Buyer's deposit, or deposits, or may return any monies deposited by the buyer, less any fees and charges actually expended.

It is understood and agreed that there has been no representations or inducement made to Buyer, except that herein set forth to purchase the said property, and that no person has any authority to make representations or inducements other than as set forth herein. That no salesman, employee or agent of the Seller, or independent Broker has any authority to modify the terms hereof or to make any agreements, representations or promises not contained herein.

Seller agrees to signify his acceptance by signing this agreement and furnishing signed copy to the Buyer within ten days.

Buyer hereby acknowledges having received and read a copy of the State of California Real Estate Inspection Report covering Tract No. 25425

Canning Gardens Seller	James H. McLennan Buyer
R. Whitt. Broker	Doris J. McLennan Buyer
	1430 E. Sandison St. Address Wilmington

EXHIBIT "1"

TE46874

(VERIFICATION — 446 and 2015.5 C.C.P.)

STATE OF CALIFORNIA, County of Los Angeles } ss.

I, the undersigned, say: I am the Assistant Secretary of VIXLER CORPORATION, Defendant and Cross-Complainant

in the above entitled action; I have read the foregoing CROSS-COMPLAINT

and know the contents thereof; and that the same is true of my own knowledge, except as to the matters which are therein stated upon my information or belief, and as to those matters that I believe it to be true.

I certify (or declare) under penalty of perjury, that the foregoing is true and correct.

Executed on November 20, 1962 (date) at Los Angeles (place), California.

S/S Philip Walsh
(Signature) Philip Walsh

Received copy of the within _____ this _____ day of _____, 19____

Attorney for _____

Received copy of the within _____ this _____ day of _____, 19____

Attorney for _____

(PROOF OF SERVICE BY MAIL — 1013a, and 2015.5 C.C.P.)

STATE OF CALIFORNIA, County of Los Angeles } ss.

I, the undersigned, say: I am and was at all times herein mentioned, a citizen of the United States and a resident of the County of Los Angeles, over the age of eighteen years and not a party to the within action or proceeding; that

My business address is _____ residence employed in

that on _____, 19____, I served the within _____

on the _____ in said action or proceeding by depositing a true copy thereof, inclosed in a sealed envelope with postage thereon fully prepaid, in a mail-box, sub-post office, substation, or mail chute (or other like facility), regularly maintained by the Government of the United States at[1] _____

in the City of Los Angeles, California addressed to the attorney _____ of record for said _____

at the office address of said attorney _____ residence, as follows:[2] "

I certify (or declare) under penalty of perjury that the foregoing is true and correct.

Executed on _____ (date) at _____ (place), California.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - BERGEN COUNTY
DOCKET NO. L-9165-62

----------x

VESTA CO., a New Jersey corporation,	:	
Plaintiff,	:	Civil Action
-vs-	:	
DELIA DAVID and CHARLES DAVID, her husband,	:	**AFFIDAVIT**
Defendants.	:	

----------x

STATE OF NEW JERSEY)
: SS.:
COUNTY OF BERGEN)

SALLY ELLIOTT, of full age, being duly sworn according to law upon her oath deposes and says:-

1. I am a witness in the above entitled action and submit the following facts to the Court concerning the pending Notice of Motion for summary judgment.

2. On Thursday, December 13th, 1962, I did go to the apartment that is the subject matter of this law suit, and was shown the apartment by Mrs. Alfred Dagle, authorized superintendent and agent for the plaintiff, Vesta Corporation.

3. At that time and place, Mrs. Dagle did accept from me $10.00 as a deposit for the rental of the apartment, and stated that I could move in on Saturday.

4. Subsequent to that date, I have tendered the remaining balance of the rental for said apartment, but it has been refused by the Vesta Corporation. I do tender herewith

the sum of $ 390.00 , as the rental and the security deposit for said apartment, and will, if the court so directs, deposit this sum in court.

5. As tenant of this apartment, I specifically granted to Delia David and Charles David, her husband, the right to occupy the apartment under my tenancy with the Vesta Corporation.

6. They are presently in possession of said apartment with my express approval.

Sally Elliott
SALLY ELLIOTT

Sworn & Subscribed to before me
this 18th day of February, 1962.

Verna M. Lane

VERNA M. LANE
NOTARY PUBLIC OF NEW JERSEY
Commission Expires December 7, 1965

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - BERGEN COUNTY
DOCKET NO. L-9165-62

VESTA CO., a New Jersey corporation,

Plaintiff,

-vs-

DELIA DAVID and CHARLES DAVID, her husband,

Defendants.

Civil Action

AFFIDAVIT

Law Offices
CHECKI & POLITAN
201 Stuyvesant Avenue
Lyndhurst, New Jersey

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - BERGEN COUNTY
DOCKET NO. L-9165-62

VESTA CO., a New Jersey corporation, Plaintiff,	:	Civil Action
-vs-	:	
DELIA DAVID and CHARLES DAVID, her husband, Defendants.	:	**AFFIDAVIT**

STATE OF NEW JERSEY)
: SS.
COUNTY OF BERGEN)

SALLY ELLIOTT, of full age, being duly sworn according to law upon her oath deposes and says:-

1. I am a witness in the above action and am making this Affidavit to supplement the previous Affidavit made by me on February 18th, 1963, which has already been filed in this action.

2. On Thursday, December 13th, 1962, I went to the apartment that is the subject matter of this law suit and was met there by Mrs. Alfred Dagle, authorized superintendent and agent for the plaintiff, Vesta Corporation.

3. Upon my arrival there, Mrs. Dagle proceeded to show me the apartment.

4. After being taken through the apartment by Mrs. Dagle, Mrs. Dagle asked me if I wanted to decide upon the rental of it right then, since Mrs. Dagle stated that there had

been a person interested in the apartment who had seen it the night before and might come back.

5. I stated to Mrs. Dagle that yes, I would like it and would like to put a deposit on the apartment so as to be sure to have it.

6. At this point, I asked Mrs. Dagle how much money she would require as a deposit. She did not indicate a specific sum, and I said to her would $10.00 be sufficient. She stated that it would.

7. Mrs. Dagle then wrote out a receipt for the $10.00 as the deposit on the apartment. This receipt is presently not in my possession, since it is being held as evidence by Hearing Examiner Julius Wildstein, of the Division against Discrimination, Commissioner of Education.

8. I did give to, and Mrs. Dagle did accept the $10.00.

9. During the course of this conversation, I asked Mrs. Dagle if I could obtain a one-year lease on the apartment. Mrs. Dagle stated to me that she did not know whether the owners would give me a lease, since the question of a lease had never arisen before. She stated that she would call and consult with the owners to determine whether they would give me a lease.

10. I asked Mrs. Dagle if I could move in on the weekend, and she said if I could, that the only thing she had to do to the apartment was to sweep it out.

11. On December 14th, 1962, in the evening, I did return to the premises and was again met by Mrs. Dagle. Mr. Byron Baer

asked Mrs. Dagle whether the owners had consented to entering into a lease with me. Mrs. Dagle stated that she had spoken to Mr. Senger, one of the owners, and that Mr. Senger said that the owners agree to signing a one-year lease and that I could have the lease in one or two weeks, since the lawyer had to prepare it.

12. We then proceeded downstairs to the apartment, and Mrs. Dagle opened the door and let myself and one Byron Baer into the apartment. At that point, a discussion concerning the issue of discrimination in the rental of this apartment was engaged in by myself, Byron Baer and Mrs. Dagle, and at this point, I did take possession of the apartment.

13. On December 19th, 1962, I did tender to Mrs. Dagle, as superintendent and agent of the plaintiff, Vesta Corporation, a check in the amount of $190.00, which check represented the balance of one month's rent, together with one month's security. Mrs. Dagle refused to accept this check.

14. On December 22nd, 1962, I did authorize the defendants, Delia David and Charles David, her husband, to move into this apartment under my tenancy with the Vesta Corporation. They are still in possession of said apartment with my express authorization and approval.

15. I do tender herewith the sum of $390.00 as the rental and the security deposit for said apartment, and if the Court so directs, will deposit this sum in Court, pending the outcome of this law suit.

Sworn & Subscribed to before me)
this 28 day of February, 1963)

Verna M Lane

VERNA M. LANE
NOTARY PUBLIC OF NEW JERSEY
Commission Expires December 7, 1965

Sally Elliott
SALLY ELLIOTT

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - BERGEN COUNTY
DOCKET NO. L-9165-62

VESTA CO., a New Jersey corporation, Plaintiff,	Civil Action
-vs-	
DELIA DAVID and CHARLES DAVID, her husband, Defendants.	ANSWER & DEMAND FOR TRIAL BY JURY

Defendants, Delia David and Charles David, residing at 2 Dempsey Avenue, Edgewater, New Jersey, in answer to the complaint of the plaintiff, Vesta Co., say:-

1. They deny so much of paragraph one that alleges plaintiff is entitled to possession of said apartment and leave plaintiff to its proof concerning the remaining allegations therein.

2. They have no knowledge as to the allegations of paragraph two and leave plaintiff to its proof.

3. They deny the allegations of paragraph three.

FIRST SEPARATE DEFENSE

Defendants are in lawful possession of the premises.

SECOND SEPARATE DEFENSE

Plaintiff has discriminated against defendants in the renting of this apartment because defendants are negro.

THIRD SEPARATE DEFENSE

Defendants reserve the right to move to stay this action pending a final determination of an administrative hearing before the Department of Education, Division on Civil Rights, wherein the plaintiff ~~is~~ are charged with discrimination in the rental of ~~this~~ an apartment pursuant to N.J.S.A. 18:25-1, et seq.

CHECKI & POLITAN
Attorneys for Defendants

By Nicholas H. Politan
NICHOLAS H. POLITAN

DEMAND FOR TRIAL BY JURY

Defendants demand trial by jury on all issues.

CHECKI & POLITAN
Attorneys for Defendants

By Nicholas H. Politan
NICHOLAS H. POLITAN

We do hereby certify that a copy of the within Answer was served within the time prescribed under R. R. 4:12.

CHECKI & POLITAN
Attorneys for Defendants

By Nicholas H. Politan
NICHOLAS H. POLITAN

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - BERGEN COUNTY
DOCKET NO. L-9165-62

VESTA CO., a New Jersey corporation,

Plaintiff,

-vs-

DELIA DAVID and CHARLES DAVID, her husband,

Defendants.

Civil Action

ANSWER & DEMAND FOR TRIAL BY JURY

Law Offices
CHECKI & POLITAN
201 Stuyvesant Avenue
Lyndhurst, New Jersey

THE FOLLOWING DOCUMENTS ARE THE

BEST AVAILABLE.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION : BERGEN COUNTY
DOCKET NO. L-9165-62

VESTA CO., a New Jersey corporation, Plaintiff,	)	
vs.	)	CIVIL ACTION
DELIA DAVID and CHARLES DAVID, her husband, Defendants.	)	NOTICE OF MOTION

PLEASE TAKE NOTICE, That on Friday, February 15th, 1963, at 9:30 o'clock in the forenoon, or as soon thereafter as counsel may be heard, we shall apply to the Hon. J. Wallace Leyden, Assignment Judge, at the Court House, Hackensack, New Jersey, for summary judgment in favor of the plaintiff and against the defendants, on the ground that there is no issue of fact to be determined, and that the plaintiff is entitled to judgment as a matter of law.

Annexed hereto is the affidavit of Henry C. Senger, Jr., upon which this application will be based.

MAJOR & MAJOR
Attorneys of Plaintiff

(S) James A. Major
By:
James A. Major, Partner

TO: CHECKI & POLITAN, ESQUIRES
Attorneys of Defendants
201 Stuyvesant Avenue
Lyndhurst, New Jersey

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION : BERGEN COUNTY
DOCKET NO. L-9165-62

VESTA CO., a New Jersey corporation, Plaintiff, vs. DELIA DAVID and CHARLES DAVID, her husband, Defendants.	)	CIVIL ACTION AFFIDAVIT

STATE OF NEW JERSEY)
SS:
COUNTY OF BERGEN)

HENRY C. SENGER, JR., of full age, being duly sworn on his oath according to law, deposes and says:

1. I am secretary-treasurer of Vesta Co., the above named plaintiff, a New Jersey corporation. The three stockholders are Joseph T. Panucci, John Lowe and myself. Mr. Panucci is Vice President of the company and Mr. Lowe is president.

2. The company took title to the premises in question by a deed dated November 1st, 1961 and recorded in Book 4335 of Bergen County Deeds, page 65.

3. The premises consist of 8 apartments and two stores. Since February of 1962 and continuously up to and including the present time, the corporation has been in possession of the said premises described in the complaint, and has been collecting the rents therefrom.

4. The apartment now occupied by the defendants, and known as the six-room apartment on the third floor front, was vacant in December of 1962 and the corporation advertised the premises for rent. Mrs. David, one of the defendants in the above matter, sought to rent the said apartment and was told that the premises had in fact been rented. She was, therefore, not accepted as a tenant. Despite this fact, she and the defendant, Charles David, moved into the said premises

without the knowledge, consent, and/or permission of the plaintiff, or any of its representatives, moving into the said premises several days before December 25th, 1962, ever since which time the defendants have remained in possession.

5. The defendant, Delia David, made a complaint on December 18, 1962, to the Division on Civil Rights, Department of Education, State of New Jersey, claiming that she was denied occupancy of said premises on the ground of her color, and in the proceedings before said Division, to wit, on January 11th, 1963, the said Delia David admitted she was in possession of said premises without the permission of the superintendent of the apartment.

6. It is a fact that the said defendants were never authorized b the plaintiff corporation, or any of its officers or employees, to takepossession of said premises, and they in fact have held possession of said premises against the wishes of the plaintiff corporation.

(S) Henry C. Senger, Jr.
Henry C. Senger, Jr.

Sworn and Subscribed to
before me this 6
day of February, 1963.

(S) Josephine Bors
Josephine Bors
Notary Public of New Jersey

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - BERGEN COUNTY
DOCKET NO. L-9165-62

VESTA CO., a New Jersey corporation, Plaintiff,	:	Civil Action
-vs-	:	
DELIA DAVID and CHARLES DAVID, her husband, Defendants.	:	NOTICE OF MOTION

TO: MAJOR & MAJOR, ESQUIRES
Attorneys of Plaintiff
241 Main Street
Hackensack, New Jersey

S I R S : -

PLEASE TAKE NOTICE that on Thursday, February 21st, 1963, at 9:30 o'clock in the forenoon, or as soon thereafter as counsel may be heard, we shall apply to the Honorable J. Wallace Leyden, Assignment Judge, at the Court House in Hackensack, New Jersey, for an Order staying this action, pending a final determination of an administrative hearing before the Department of Education, Division on Civil Rights, wherein plaintiff is charged with discrimination in the rental of this apartment, pursuant to N. J. S. A. 18:25-1 et seq.

Upon the return day, we shall rely upon Affidavit to be filed forthwith.

CHARLES A. POLITAN
Attorneys of Defendants

By Nicholas H. Politan
NICHOLAS H. POLITAN

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - BERGEN COUNTY
DOCKET NO. L-9163-62

----------x

VESTA CO., a New Jersey corporation, :

Plaintiff, :

-vs- :

DELIA DAVID and CHARLES DAVID, her husband, :

Defendants. :

----------x

Civil Action

AFFIDAVIT

STATE OF NEW JERSEY)
: SS.:
COUNTY OF BERGEN)

DELIA DAVID, of full age, being duly sworn according to law upon her oath deposes and says:

1. I am one of the defendants in the above entitled action, which seeks to eject me from the premises known as #2 Dempsey Avenue, Edgewater, New Jersey.

2. On December 18th, 1962, I did file a complaint with the State of New Jersey, Department of Education, Division on Civil Rights, alleging discrimination because of my race, in the renting of the apartment which is the subject matter of this law suit.

3. On Friday, January 11th, 1963, and Tuesday, January 15th, 1963, there was a hearing on this complaint before hearing examiner Julius Weilstein. A decision has not, as yet, been rendered. I am informed by my attorney that if the complaint is sustained, the Commissioner of Education has the right to

ords that myself and my family admitted as tenants to the apartment.

DELIA DAVID

Sworn & Subscribed to before me
this 18th day of February, 1963.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - BERGEN COUNTY
DOCKET NO. C-1147-62

HENRY C. SENGER, JR., JOSEPH T. PANUCCI and JOHN LONG,	
Plaintiffs,	Civil Action.
-vs-	
DAVID L. ELLIOTT and SALLY ELLIOTT, his wife, BYRON BAER, DELIA DAVID and CHARLES DAVID, her husband, NAHUM BACHRACH and CONGRESS OF RACIAL EQUALITY, an unincorporated entity,	ANSWER DEMAND FOR TRIAL BY JURY
Defendants.	

Defendants, David L. Elliott and Sally Elliott, Byron Baer, Delia David and Charles David, Nahum Bachrach and Congress of Racial Equality, residing in the State of New Jersey, in answer to the complaint of the plaintiffs, state:

FIRST COUNT

1. They have no knowledge as to the allegations of paragraph one, and leave plaintiffs to their proof.

2. They have no knowledge as to the allegations of paragraph two, and leave plaintiffs to their proof.

3. They have no knowledge as to the allegations of paragraph three, and leave plaintiffs to their proof.

4. To the best of defendants' knowledge the apartment was vacant.

5. Defendants deny the allegations of paragraph five.

6. Defendants deny all the allegations of paragraph 6 (a) to 6 (k), which seek to show that there existed an "agreement, confederation, and conspiracy", and leave the plaintiffs to their proof as to each and every allegation and innuendo therein contained.

7. They deny the allegations of paragraph seven.

8. They admit so much of paragraph eight, which alleges that the Congress of Racial Equality is unincorporated in New Jersey, and leave plaintiffs to their proof concerning the membership and spokesmen.

SECOND COUNT

1. They have no knowledge as to the allegations of paragraph one, and leave plaintiffs to their proof.

2. In answer to paragraph two, defendants make a part hereof, as if the same were herein set forth at length, all the answers of the First Count.

3. Defendants deny all the allegations of paragraph three which seek to show that there existed an "agreement, confederation, and conspiracy", and leave the plaintiffs to their proof as to each and every allegation and innuendo therein contained.

4. Defendants deny all the allegations of paragraph four which seek to show that there existed an "agreement, confederation, and conspiracy", and leave the plaintiffs to their proof as to each and every allegation and innuendo therein contained.

THIRD COUNT

1. They have no knowledge as to the allegations of paragraph one, and leave plaintiffs to their proof.

2. In answer to paragraph two, defendants make a part hereof, as if the same were herein set forth at length, all the answers of the First Count.

3. Defendants deny all the allegations of paragraph three, which seek to show that there existed an "agreement, confederation, and conspiracy", and leave the plaintiffs to their proof as to each and every allegation and innuendo therein contained.

FIRST SEPARATE DEFENSE TO ALL COUNTS

The complaint and each and every allegation therein contained, fails to state a claim upon which relief can be granted.

SECOND SEPARATE DEFENSE TO ALL COUNTS

All acts complained of were done in good faith and without malice.

THIRD SEPARATE DEFENSE TO ALL COUNTS

None of the allegations of the complaint which purportedly provide a basis for a cause of action for defamation, are reasonably capable of defamatory meaning.

FOURTH SEPARATE DEFENSE TO ALL COUNTS

All of the allegations of the complaint which purportedly provide a basis for a cause of action for defamation, are true.

FIFTH SEPARATE DEFENSE TO ALL COUNTS

All of the allegations of the complaint, which purportedly provide a basis for a cause of action for defamation, were done without malice.

SIXTH SEPARATE DEFENSE TO ALL COUNTS

All the picketing and caroling and other acts alleged in the complaint, was done in a peaceful and lawful manner and in good faith.

SEVENTH SEPARATE DEFENSE TO ALL COUNTS

All the acts alleged as a basis for this complaint, were done to accomplish a lawful and constitutional purpose, namely to obtain housing facilities for a negro family denied housing because they were negro.

EIGHTH SEPARATE DEFENSE TO ALL COUNTS

The plaintiffs have suffered no damages.

NINTH SEPARATE DEFENSE TO ALL COUNTS

The plaintiffs by their actions are estopped from maintaining this action.

TENTH SEPARATE DEFENSE TO ALL COUNTS

Defendants reserve the right to move to stay this action pending a final determination of an administrative hearing before the Department of Education, Division on Civil Rights, wherein the plaintiffs are charged with discrimination in the rental of an apartment pursuant to N. J. S. A. 18:25-1, et seq.

CHECKI & POLITAN
Attorneys for Defendants

By Nicholas H. Politan
NICHOLAS H. POLITAN

DEMAND FOR TRIAL BY JURY

Defendants demand trial by jury on all issues.

CHECKI & POLITAN
Attorneys for Defendants

By Nicholas H. Politan
NICHOLAS H. POLITAN

We do hereby certify that a copy of the within Answer was served within the time prescribed under R. R. 4:12.

CHECKI & POLITAN
Attorneys for Defendants

By Nicholas H. Politan
NICHOLAS H. POLITAN

STATE OF NEW JERSEY
DEPARTMENT OF EDUCATION
DIVISION ON CIVIL RIGHTS
DOCKET NO. H2R-168

----------x

DELIA DAVID, :

Complainant, :

-vs- :

VESTA CO. and HENRY C. SENGER, :
JR., JOHN LOWE, JOSEPH T.
PANUCCI and MRS. ALFRED DAGEE, :

Respondents. :

----------x

COMPLAINANT'S OBJECTIONS TO HEARER'S REPORT

Pursuant to Rule 14, the complainant objects to so much of the Hearer's Report filed in this cause on March 27th, 1963 and received by counsel for complainant on March 28th, 1963, as denies affirmative relief to the complainant by way of an Order requiring the respondents to make specifically available to the complainant or to tender to her the apartment in dispute, and assigns the following grounds:-

(1) The Hearing Examiner's Report states that because complainant is presently occupying the apartment which is the subject matter of this hearing, commissioner cannot order occupancy. As noted in the Report, a civil action in the nature of ejectment was commenced by the respondent corporation against the complainant and her husband, seeking possession of the apartment (Vesta Co. vs. Delia David and Charles David, her husband, Superior Court of New Jersey, Law Division, Bergen County, Docket No. L 9165-62). Subsequent to the hearing of this discrimination complaint, on March 11th, 1963, on motion of the respondent corporation, Judge Galanti entered an Order in favor

of the respondent corporation, which order provided for the ejectment of the complainant and her husband from the premises. On March 14th, 1963, a further Order was entered staying the execution of the previous Order, pending an appeal, and a Notice of Appeal in that case was filed on March 21st, 1963. The appeal of the ejectment action is presently pending.

In effect, to deny the complainant any affirmative relief, notwithstanding a finding of discrimination by the Hearing Examiner, is to leave the complainant remediless, since, as the above detailed facts indicate, there has already been an adjudication ejecting her from the premises.

(2) The net effect of the denial of affirmative relief in this case and the action of the Superior Court in entering an Order of ejectment in the civil action, is to deny complainant the constitutional safeguards of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, under the principles enunciated in the Supreme Court decision of Shelley vs. Kramer, 334 U. S. 1 (1948); Barrows vs. Jackson, 346 U. S. 249 (1953). The principle of the Shelley case, supra, is that where the legal processes of the State are used to enforce a policy of discrimination, the action contravenes the safeguards of the Equal Protection Clause of the Fourteenth Amendment. Where, as here, discrimination has been found, the legal processes of the State cannot be utilized to enforce discriminatory practices. The denial of affirmative relief effectively promotes an unconstitutional result.

(3) The denial of affirmative relief by the Hearing Examiner for the reason that self-help has been employed by the complainant is illusory, since simultaneously the complainant

is being ejected from the premises.

(4) Without the citation of authority, the Hearing Examiner indicates that the res which would form the subject matter of an Order of specific relief, has been removed from the reaches of the laws of discrimination by complainant's self-help. The complainant's review of the law against discrimination (N. J. S. A. 18:25-1, et seq.) fails to disclose any such provision of the law which would indicate that the denial of affirmative relief can be based on such a proposition.

(5) The denial of affirmative relief is a violation of the letter and the spirit of the law of discrimination (N. J. S. A. 18:25-1, et seq.).

(6) The respondents, having proceeded to obtain judgment in the ejectment action as heretofore set forth, have committed another act of discrimination against this complainant.

CHECKI & POLITAN
Attorneys for the Complainant

By Nicholas H. Politan
NICHOLAS H. POLITAN

CHECKI & POLITAN
COUNSELLORS AT LAW
201 STUYVESANT AVENUE
LYNDHURST, NEW JERSEY
WEBSTER 9-1550

JAMES D. CHECKI, JR.
NICHOLAS H. POLITAN

RECEIVED
JAN 23 1963
VLADECK & ELIAS

January 22nd, 1963

Vladeck & Elias, Esquires
280 Broadway
New York, New York

ATTENTION CARL RACHLIN, ESQUIRE

Re: C O R E

Dear Mr. Rachlin:-

Pursuant to your conversation with my partner, I submit to you the following information concerning CORE litigation in New Jersey:

On December 16th, 1962, I was called by Mrs. Sally Elliot, Chairman of the Bergen County CORE group and asked to represent them in the Magistrate's Court in Edgewater, with reference to a trespassing complaint filed against three CORE members. I appeared on that evening and had the matter postponed until Friday, December 21st, 1962.

On the return day, I tried the case and was successful in obtaining an acquittal of all three defendants. During this time, Mrs. Delia David filed a complaint with the Commission on Civil Rights with reference to a discrimination in housing in the Edgewater apartment. After several conferences of preparation, I did appear in that proceeding on Friday, January 11th, 1963, and Tuesday, January 15th, 1963. The determination in that case is awaiting the hearing examiners' findings of fact and conclusions of law. I might add in this regard that approximately thirteen hours of trial were required.

Subsequent thereto, Mr. and Mrs. David were served with a Summons and Complaint in ejectment, a copy of which I enclose herewith. In addition, a number of members of CORE were served with a Summons and Complaint, which demanded an injunction and compensatory and punitive damages. I also enclose a copy of that.

Both of these complaints seem to indicate that protracted litigation will be involved, and particularly in the latter complaint, fundamental issues concerning CORE and the right of its members to utilize "direct action" in attaining its goals is there indicated.

In light of the nature of the complaint and the financial situation concerning this chapter of CORE, it would appear that financial assistance from the national office is required. In that regard, suffice to say that there will be many motions made, extensive depositions and interrogatories utilized and a lengthy trial.

To date, we have received $50.00 in fees from the group and feel that additional sums are necessary to prosecute the litigations to a successful conclusion.

If you have any questions, please contact us, and I will be happy to furnish you with any details that you would like.

Very truly yours,

CHECKI & POLITAN

By Nicholas H. Politan

NHP:- edp
Enclosures

January 20th, 1963

Professor Norman Redlich
New York University Law School
Washington Square
New York 3, N. Y.

Dear Norman:

Enclosed is the copy of an interesting complaint in New Jersey. If you have a moment, please let me have your thoughts. There was a note in the March, 1962 Columbia Law Review bearing on the problem. Do you know of any other material or briefs on this.

Regards.

Cordially yours,

CARL BAGELIN

CB:fk
Enc.

January 25th, 1963

Prof. Michael Sovern
School of Law
Columbia University
Morningside Heights
New York 27, N. Y.

Dear Mike:

I enclose a copy of the complaint I promised you, just received by us. Any suggestions will be most welcome.

Also, many thanks for suggesting the note in the March, 1962 Columbia Law Review. It said many good things in it, although I wish it spent a little more time analyzing the facts in the more important cases, and less time speculating on the applicability of the anti-trust laws.

With best regards.

Cordially,

CARL RAGSDALE

CR:rk
enc.

January [illegible], 1963

Nicholas E. Pelizzon, Esq.
Chandler & Pelizzon, Esqs.
[illegible]
Englewood, New Jersey

Re: Vasta Co.

Dear Mr. Pelizzon:

Thank you for the copies of the complaint in Vasta vs. Redd and Langer vs. Ellis.

By the way, you might look at the March 1962 Columbia Law Review. There is a note [illegible] Congress' Power to Tax on the Income Earned in the Exercise of Police Even the Question of Whether or Not [illegible] seems to have upset the purposes of the [illegible].

Of course, this is another matter and that of course becomes a question of [illegible].

In the longer run, most of different [illegible] dealing in contract the corporation and [illegible] which [illegible] in the [illegible] [illegible] [illegible]

January 23th, 1963

Mr. Richard Haley
Congress of Racial Equality
38 Park Row
New York, N. Y.

Dear Dick:

Enclosed is a letter from Chaski & Politan. The new actions in Jersey are important and undoubtedly will be time consuming. Will Jersey pay the bill? These fellows will be reasonable, but I suppose they have a right to know about their fee.

I will be glad to discuss this with you.

Cordially yours,

CARL RACKELIN

Clark
cc: J. Farmer
G. Carey

February 26th, 1942

Proof, Herman Duncan
Clerk, Superior Court
City Hall Annex
Tenth Street Square L. I. N. Y.

Dear Herman:

May I take this opportunity to thank you for making available to us the services of Harold Sobel who rendered a very helpful memorandum and put with us and our New Jersey attorneys in the suit against Cohn.

This is a most vexing problem. We have just received word of a similar suit in California. When I receive a copy of the complaint, I trust you will not object should I send you one.

Sincerely yours,

CARL RAGHELIN

Clerk
cc: Gordon Carey
Richard Weiss

February 14th, 1963

Fred Gerard, Esq.
Wirin, Rissman & Gerard, Esqs.
257 So. Spring Street
Los Angeles 12, California

Dear Fred:

I have just received word that you are defending a case against CBSE brought by Wexler Corporation. Thank you very much.

May I offer my assistance. In case you have not seen it, there is a Law note in the March, 1962 Columbia Law Review, entitled "Secret Legal Censure". This may be of some help to you. We have a case in New Jersey on this subject.

Would it be convenient for you to send me a copy of the complaint.

Sincerely yours,

CARL RACHLIN

CR:rk
cc: James Ferman
Marvin Kish

A. L. WIRIN
FRED OKRAND
ROBERT R. RISSMAN
PAUL M. POSNER

WIRIN, RISSMAN, OKRAND & POSNER
ATTORNEYS AT LAW
257 SOUTH SPRING STREET
LOS ANGELES 12, CALIFORNIA
TELEPHONE
MADISON 4-9708

15 February 1963

RECEIVED
FEB 18 1963
VLADECK & ELIAS

Carl Rachlin, Esq.
Vladeck & Elias
280 Broadway
New York 7, New York

Dear Carl:

Thank you for yours of February 14 regarding the case brought by Vixler Corporation against CORE and its members.

Actually that phase of the case is by way of a cross-complaint to a complaint we filed under our California Civil Rights Act for refusal to sell to the plaintiffs - a Negro couple.

I enclose a copy of the cross-complaint.

The defendants, other than Mr. and Mrs. McLennan, for whom we are appearing, are, unless there are some additional changes made, being represented by Levy, DeRoy, Geffner, Koszdin & Glow, Suite 801, 1520 Wilshire Boulevard, Los Angeles 17. Mr. Henry Nelson of their office is handling the case.

Any help you can give will be most welcome. If you can spare a copy of the complaint and answer in your New Jersey case, I am sure Mr. Nelson would like to have it.

Sincerely yours,

Fred Okrand

Fred Okrand

FO/s
Enc.

cc: Mr. Nelson (no. enc.)

CHECKI & POLITAN
COUNSELLORS AT LAW
201 STUYVESANT AVENUE
LYNDHURST, NEW JERSEY
WEbster 9-1550

JAMES D. CHECKI, JR.
NICHOLAS H. POLITAN

RECEIVED
MAR - 5 1963
VLADECK & ELIAS

March 7th, 1963

Vladeck and Elias, Esquires
280 Broadway
New York 7, New York

ATTENTION CARL RACHLIN, ESQUIRE

Re: Vesta Co. -vs- David
(Discrimination

Dear Carl:-

Enclosed herewith please find the following documents which have been filed in the action:-

Answer
2 Affidavits of Sally Elliott
Notice of Motion and Affidavit of Delia David
Notice of Motion of the Vesta Co.

Also enclosed please find an itemized list of our work, disbursements and charges to date in this matter.

On Thursday, February 21st, 1963, as you know, I appeared before Judge Gallanti and argued the Motion for summary judgment. At that time, Judge Gallanti requested a further hearing and additional affidavits, which were filed.

On Friday, March 1st, 1963, I appeared again before Judge Gallanti, and after considering the Affidavits, arguments and brief, entered summary judgment in favor of the plaintiff, holding that no tenancy was created. At this point, I immediately made a motion to

Therefore I am forwarding your bill to Mr. Lachman (Sally of CORE, who has charge of such matters - Is there any possibility of pushing merits

stay enforcement of the judgment, pending appeal, which stay was granted, and a Notice of Appeal is being filed forthwith. The appeal will necessitate, in addition to the filing fee and security costs outlined in the attached list, ordering the transcript of the oral judgment of Judge Gallanti, which I presume will be approximately 15 pages in length.

As of yet, the Hearing Examiner has not filed an opinion in the discrimination case, which should effect this ejectment action. As soon as that is filed, I will notify you.

In regard to the preparation of an Appellate brief in this matter, please communicate with me as to your thoughts concerning it, and any other questions which I might answer.

I would appreciate receiving a check for the work done up to this point, as portions of it relate to out-of-pocket disbursements.

Very truly yours,

CHECKI & POLITAN

By: Nicholas H. Politan

NHP:- edp
Enclosures

the ~~of~~ Hearing Examiner ~~Bath~~ to a favorable ruling from him ~~might~~ would put us in a better position. Please give me your estimate of costs on appeal & the merits

Regards

CHECKI & POLITAN
COUNSELLORS AT LAW
201 STUYVESANT AVENUE
LYNDHURST, NEW JERSEY
WEbster 9-1550

JAMES D. CHECKI, JR.
NICHOLAS H. POLITAN

RECEIVED
MAR - 8 1963
VLADECK & ELIAS

March 7th, 1963

Vladeck and Elias, Esquires
280 Broadway
New York 7, New York

ATTENTION CARL RACHLIN, ESQUIRE

Re: Senger -vs- Elliott

Dear Carl:-

With reference to this case, I enclose herewith a copy of the Answer and Demand for Trial by Jury filed by us, together with a bill for the filing fee and preparation of Answer.

Depositions of three of the defendants by the plaintiff was held yesterday. I would assume that it would be desirable that we take depositions of the plaintiffs. As to that, would you kindly advise me as to whether CORE would like to have these depositions taken.

Also, advise me as to any other thoughts you may have in this matter.

Very truly yours,

CHECKI & POLITAN

By: Nicholas H. Politan

Nicholas H. Politan

NHP:- edp
Enclosures

Dear Nick
I like your answer. Thanks for the copy. Please take the depositions in this case. I should be delighted to assist you
Carl

March 13th, 1963

Nicholas M. Politan, Esq.
[illegible] Sherwood Avenue
Englewood, New Jersey

Re: Vasta Co. v. David

Dear Nick:

I am forwarding your bill to Mr. [illegible] Haley of CCRS, who has charge of such matters.

Is there any possibility of rushing the Hearing Examiner. A favorable result from him would put us in a better position.

Please give me your estimate of costs on appeal of the merits.

With best regards.

Sincerely,

CARL BACHELIN

CB:rk

March 12th, 1963

Mr. Richard Haley
CORE
38 Park Row
New York, N. Y.

Re: Senger v. Elliott and
Vanta Co. v. Della David and Charles [illegible]

Dear Dick:

Enclosed please find two bills from Checki & Politan re their services in the New Jersey suit for damages against CORE.

If there are any questions, I would be pleased to discuss this with you.

Sincerely,

CARL RACHLIN

CR:rk
enc.

CHECKI & POLITAN
COUNSELLORS AT LAW
201 STUYVESANT AVENUE
LYNDHURST, NEW JERSEY
WEBSTER 9-1550

JAMES D. CHECKI, JR.
NICHOLAS H. POLITAN

April 8th, 1963

Vladeck & Elias, Esquires
280 Broadway
New York 7, New York

ATTENTION CARL RACHLIN, ESQUIRE

Re: Senger et als v. Elliott et als

Dear Carl:-

Since our last communication concerning this case, I have taken the depositions of all the plaintiffs. The transcript should be completed within the next few days. I shall be happy to send you my copy for examination, if you so desire.

In this case, I enclose a bill for services rendered to date. You will note that most of this bill is a disbursement, and I would appreciate receiving payment of this as quickly as possible.

Very truly yours,

CHECKI & POLITAN

By: Nicholas H Politan edp
Nicholas H. Politan

NHP:- edp
Enclosure

RECEIVED
APR - 8 1963
VLADECK & ELIAS

CHECKI & POLITAN
COUNSELLORS AT LAW
201 STUYVESANT AVENUE
LYNDHURST, NEW JERSEY
WEBSTER 9-1550

JAMES D. CHECKI, JR.
NICHOLAS H. POLITAN

April 8th, 1963

RECEIVED
APR - 9 1963
VLADECK & ELIAS

Vladeck and Elias, Esquires
280 Broadway
New York 7, New York

ATTENTION CARL RACHLIN, ESQUIRE

Re: Vesta Co. vs. David
David vs. Vesta Co.

Dear Carl:-

Since our last communication together, the Hearing Examiner has rendered his opinion in the Edgewater case. The opinion is 40 pages long, and although it clearly finds discrimination, it does not order rental of the apartment because the Davids are already in possession of the apartment. This is an obviously illusory answer to the entire problem, and I have filed Objections to the Hearer's Report, a copy of which I enclose herewith.

Assuming that the Commissioner of Education does not modify the Hearer's Report to order occupancy, it is my opinion that we should appeal to the Superior Court, Appellate Division, from so much of the Hearer's determination that does not order occupancy. At this point, I feel that we should move to consolidate the appeal in the ejectment action with the appeal on the discrimination hearing and place the entire situation before the Appellate Division in one package. If you have any thoughts on this, please communicate with me.

I also enclose our bill to date, which indicates the amount still due and owing to us on these two particular cases. I would appreciate receiving payment as quickly as possible.

Very truly yours,
CHECKI & POLITAN

By: Nicholas H. Politan

NHP:- edp
Enclosures

April 15, 1963

Nicholas H. Politan, Esq.
201 Stuyvesant Avenue
Lyndhurst, New Jersey

Dear Nick:

Thank you for your report. I have recommended that we proceed as you have suggested. I think we should try to resolve this [illegible] in the Appellate Division.

I trust you can give me a little more detailed report of the decision of the hearing officer.

Your bills have been forwarded.

Regards,

CARL RACHLIN

CR:cw
cc: Richard Heley

CHECKI & POLITAN
COUNSELLORS AT LAW
201 STUYVESANT AVENUE
LYNDHURST, NEW JERSEY
WEBSTER 9-1550

JAMES D. CHECKI, JR.
NICHOLAS H. POLITAN

RECEIVED
SEP 30
VLADECK & ELIAS

September 26th, 1963

Vladeck and Elias, Esquires
280 Broadway
New York 7, New York

ATTENTION CARL RACHLIN, ESQUIRE

Re: Senger vs. Elliott
Vesta Co. vs. David
David vs. Vesta Co.

Dear Carl:-

Enclosed please find our billings in the CORE matters, up to date. As is evident, they involve a substantial amount of money. We have recently been served with two more motions, with accompanying briefs, which will require extensive research and writing, together with oral argument.

We cannot, under the circumstances, continue to devote the time required to this venture, unless we can receive substantial payment of our billings. They involve disbursements and minimal charges of fees for the work we have performed. In light of this, we feel they should be paid within a reasonable time.

This being so, if arrangements cannot be made to make immediate payment of these invoices, we will have no alternative but to withdraw from all of these matters.

Trusting you will realize our position, I remain

Yours very truly,

NHP

NICHOLAS H. POLITAN

NHP/edp
Encs.

cc: Mrs. Sally Elliott
Chairman, Bergen County CORE

CHECKI & POLITAN
COUNSELLORS AT LAW
801 STUYVESANT AVENUE
LYNDHURST, NEW JERSEY

WEBSTER 9-1550

JAMES D. CHECKI, JR.
NICHOLAS M. POLITAN

September 26th, 1963

Vladeck and Elias, Esqs.
280 Broadway
New York 7, New York

- to -

CHECKI & POLITAN

Re: Vesta Co. vs. David
David vs. Vesta Co.

To:	Balance as heretofore set forth	$ 326.25
	Appearance before Appellate Division re Consolidation and Stay	50.00
	Appearance before County Court re Hearing on Discrimination Appeal	50.00
		$ 426.25

CHECKI & POLITAN
COUNSELLORS AT LAW
301 STUYVESANT AVENUE
LYNDHURST, NEW JERSEY
WEbster 9-1880

JAMES D. CHECKI, JR.
NICHOLAS H. POLITAN

September 26th, 1963

Vladeck and Elias, Esquires
280 Broadway
New York 7, New York

- to -

CHECKI & POLITAN

Re: Senger vs. Elliott

To: Balance as heretofore set forth

---------- $ 453.75

SHAPIRO, BERNARD vs. THOMPSON, NOLAN, 1967-68
(WELFARE RESIDENCY CASES)

Society Of Wisconsin

Please Retain Original Order

MEMORANDUM ON :

THOMPSON v. SHAPIRO

The plaintiff was a woman seeking aid to dependent children under Connecticut law soon after she moved from Massachussetts to Connecticut to live with her Mother. ADC was denied by the defendant, the State Commissioner of Welfare, on the basis of Conn. Gen. Stat, § 17-2d, which requires one year residency to receive ADC (or relief under certain other general assistance programs). The one year requirement does not apply to persons who have a "cash stake", that is, are self-supporting for three months upon arrival, have come with a bona fide job offer, or have come seeking employment for a period during which the employment sought would normally be found.

The plaintiff sought a declaratory judgement what S17-2d was unconstitutional, an injunction against its further enforcement, and payment of monies unconstitutionally withheld. The three judge District Court granted all the relief sought on the basis that the statute violated the right to travel from state to state and the equal protection clause. On the constitutional right to travel, the court did not profess to know the source, but pointed to decisions in the Supreme Court which were based upon its existence (Aptheker, Guest, Edwards. Whether the right stemmed from the priveleges and immunities clause, Art. IV §2, which prohibits any state from denying the priveleges and immunities of citizenship to the citizens of another state, or from the state citizenship clause of Amendment 14, § 1, entitling all citizens of the United States to be

citizens of the state where they reside, the right to travel was violated by § 17-2d because the denial of "even a gratuitous benefit " discouraged her exercise of that right.

The Equal protection clause was also held violated because the purpose for classifying those who could and could not receive ADC was invalid, and because the classifications were arbitrary. The avowed purpose of the requirement of either one year residency on a "cash stake" was to protect the state's treasury by refusing aid to those indigents coming solely to get relief. The court held that this classification discriminated against indigents who had a limited means of support and those who did not.

Furthermore the classifications in light of this purpose were arbitrary, since there was insufficient evidence that persons without a so-called cash stake would be a greater drain on the treasury than those without.

The court pointed out that it was not holding that there would be no residency requirement since plaintiff herself was a resident of Connecticut, but that a required period of residency must meet the requirements of equal protection.

It might be noted that while the statute was held to violate the right to travel because it discouraged travel, the court held that a limited residency period could be valid if it applied to all indigents for administrative purposes or other purposes not arbitrary. In other words, if the required residency period does not violate equal protection it is valid even if it tended to discourage moving from state to state.

States may not impose residency requirements in order to exclude from its welfare programs, persons entering the state to obtain welfare. The welfare programs must be administered equally to all residents. A period of residency may be required

for administrative purposes such as investigating the clients welfare, but such period must be applied to all applicants,with with no discrimination between certain classes, such as those who can sustain themselves for three months and those who cannot. Other "constitutionally recognized reasons" may also be used for restricting grants under welfare programs as long as such restrictions do not cause discrimination.

The case does not establish a right to receive welfare, but only a right to equal treatment under existing welfare programs.

6-23-67
Stephen Hill

SUPREME COURT OF THE UNITED STATES

October Term, 1967

No. 813

BERNARD SHAPIRO, Welfare Commissioner of Connecticut, Appellant,

v.

VIVIAN THOMPSON, Appellee.

No. 1134

WALTER E. WASHINGTON, et al., Appellants,

v.

MINNIE HARRELL, et al., Appellees.

No. 1138

ROGER A. REYNOLDS, et al., Appellants,

v.

JUANITA SMITH, et al., Appellees.

On Appeal from the District Courts of Connecticut, District of Columbia and the Eastern District of Pennsylvania

---

BRIEF OF AMERICAN JEWISH CONGRESS, COUNCIL OF JEWISH FEDERATIONS AND WELFARE FUNDS, INC., NATIONAL CONFERENCE OF CATHOLIC CHARITIES, NATIONAL COUNCIL OF THE CHURCHES OF CHRIST IN THE U. S. A. and SCHOLARSHIP, EDUCATION AND DEFENSE FUND FOR RACIAL EQUALITY, INC. AS AMICI CURIAE

HOWARD M. SQUADRON
JOSEPH B. ROBISON
Attorneys for American Jewish Congress
15 East 84th Street
New York, New York 10028
(212) TR 9-4500

CARLOS ISRAELS
Attorney for Council of Jewish Federations and Welfare Funds, Inc.
26 Broadway
New York, New York 10004

WILLIAM POLKING
Attorney for National Conference of Catholic Charities
1346 Connecticut Avenue, N.W.
Washington, D. C. 20036

WILLIAM S. ELLIS
Attorney for National Council of the Churches of Christ in the U. S. A.
51 East 42nd Street
New York, New York 10017

CARL RACHLIN
Attorney for Scholarship, Education and Defense Fund for Racial Equality, Inc.
164 Madison Avenue
New York, New York 10016
Amici Curiae

LESTER GREENBERG
STEPHEN NAGLER
Of Counsel

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SUPREME COURT OF THE UNITED STATES

October Term, 1967

No. 813

BERNARD SHAPIRO, Welfare Commissioner of Connecticut,
Appellant,

v.

VIVIAN THOMPSON,
Appellee.

No. 1134

WALTER E. WASHINGTON, et al.,
Appellants,

v.

MINNIE HARRELL, et al.,
Appellees.

No. 1138

ROGER A. REYNOLDS, et al.,
Appellants,

v.

JUANITA SMITH, et al.,
Appellees.

On Appeal from the District Courts of Connecticut, District of Columbia and the Eastern District of Pennsylvania

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BRIEF OF AMERICAN JEWISH CONGRESS, COUNCIL OF JEWISH FEDERATIONS AND WELFARE FUNDS, INC., NATIONAL CONFERENCE OF CATHOLIC CHARITIES, NATIONAL COUNCIL OF THE CHURCHES OF CHRIST IN THE U. S. A. and SCHOLARSHIP, EDUCATION AND DEFENSE FUND FOR RACIAL EQUALITY, INC. AS AMICI CURIAE

This brief amici curiae is submitted with the consent of the parties.

Statement of the Case

Each of these three cases involves an appeal from a decision by a three-judge District Court holding unconstitutional a state or Federal statutory provision imposing a residency requirement for eligibility for aid under the Federal program for Aid to Families with Dependent Children (hereinafter referred to as "AFDC") (Section 17-2d of Chapter 302 of the General Statutes of Connecticut; Section 3-203(a)(b) (1967) of the District of Columbia Code; and Section

432(6) of the Public Welfare Code of Pennsylvania).

*

With one exception, each of the plaintiffs-appellees in the three cases are children, and the adults upon whom those children depend for maternal care, who have been denied benefits under AFDC solely on the ground that they have not resided in the respective state or the District of Columbia long enough to comply with the particular residency requirement. The District of Columbia and Pennsylvania cases (Nos. 1134 and 1138) are class actions.

In each of the cases, the defendants-appellants are officials responsible for administration of the AFDC program in their jurisdictions.

AFDC programs provide relief "[f]or the purpose of encouraging the care of dependent children in their own homes or in the homes of relatives by enabling each state to furnish assistance and rehabilitation and other services, * * *" [42 U.S.C.A., Section 601]. Based upon a complicated formula set forth at 42 U.S.C.A., Section 603, qualifying AFDC state programs are reimbursed by the Federal Government in amounts varying between 50% and 80% of their payments.

Although the residency requirements differ in detail, the rejected applicants suing in each of the three cases would be required to reside within that state or the District of Columbia for one year before being eligible for AFDC benefits. In none of the cases does the respective government suggest that an alternative form of government relief is available to the rejected AFDC applicant, short of placing the child applicants in orphanages.

Although the facts with regard to each particular rejected applicant suing herein differ, the following generalizations can be made:

Appellees were denied relief because of failure to comply with residency requirements without regard to whether they had any alternative means of obtaining the necessities of life. Each of the appellees is unable to work for reasons independent of her having moved to the state, such as sickness, need to stay home to take care of very young children and, in the case of child applicants, age.

Nothing in the records indicates that any of the rejected applicants suing here entered the respective state or the District of Columbia for the purpose of receiving higher welfare benefits than they received in the place they previously resided. In fact, Minnie Harrell and her family moved to the District of Columbia from an area where relief payments were higher, Nassau County, New York. Nor is there anything in the records to indicate that the applicants attempted to obtain relief they would not be entitled to but for the fact that they did not reside in the state for the necessary period of time. The records indicate that most of the rejected families moved to the state or the District

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* This brief is limited to the question of residency requirements under AFDC programs. Therefore, we do not address ourselves to the case of the one appellee in the District of Columbia case (Vera A. Barley) who challenges a residency requirement denying her relief under another categorical aid program, Aid for the Totally and Partially Disabled.

to be near relatives who at times provide some, albeit inadequate, support.

Interest of the Amici

The American Jewish Congress is a national organization of American Jews formed in part to protect the religious, civil, political and economic rights of Jews, to implement Jewish values and to promote the principles of democracy. The sacredness of human life is a foundation stone of Jewish ethics. It requires us to give aid to the poor not only as a charitable act motivated by pity, but as an obligation, an act of justice toward the recipient, who is entitled to it as a right by virtue of his common humanity with the giver. This is reflected in the fact that there is no word for charity in Hebrew; its nearest translation is "tzedakah" which translates into "righteousness" or "social justice." We believe that this fundamental concept of public responsibility to provide for the poor is embodied in the concepts of due process and equal protection.

The Council of Jewish Federations and Welfare Funds, Inc. is a national association of 222 central Jewish community organizations serving 800 communities representing 95% of the Jewish population of the United States. The Council is governed by an annual General Assembly, composed of delegates selected by the member community organizations, which sets its policies and elects the Board of Directors and officers. In the area of health and welfare, it provides its members with consultation and information on community organization, planning for services to people, budgeting and fund raising. Direct services to member communities include help with representation of the organized American Jewish communities in collaboration with religious bodies and other public interest groups concerned with the provision of adequate, equitable and dignified public welfare services to people in need.

The National Conference of Catholic Charities was established in 1910 and is the coordinating body of the social service program of the Catholic Church in the United States. It seeks to integrate modern technology with the traditional concept of charity among Catholic workers, both professional and volunteer. The Conference provides consultation and planning assistance to local administrators, conducts research projects dealing with the present and future needs in the field, and furnishes information concerning current developments relating to welfare services. It represents the philosophy of Catholic social service to other professional groups, to national coordinating agencies, to the national Congress, and to Federal government offices.

The National Council of the Churches of Christ in the U. S. A. is a membership corporation incorporated in 1950 under the Membership Corporations Law of New York. It is the co-operative agency of thirty-four Protestant and Orthodox religious denominations with an aggregate membership of 42,000,000 throughout the United States. By its certificate of incorporation it is committed "to promote the application of the law of Christ in every relation of life." Since 1960 it has been its policy "to work for availability of adequate public assistance for all needy people; the elimination of state and local residence requirements for public assistance * * *."

The Scholarship, Education and Defense Fund for Racial Equality, Inc. (SEDFRE) is an independent national organization formed in 1962 to assist local community organizations and civil rights groups. Its services include scholarship assistance, specialized legal action and information activities on welfare and related government assistance. SEDFRE helps disenfranchised and deprived Negroes and poor whites to meet needs ranging from voting rights and improved schools to street lights and paved streets. It also seeks a better way to acquaint welfare clients with their rights under the law and encourages them to take the necessary steps to make sure that their rights are respected.

These organizations join in this brief because they have become increasingly concerned with the deepening gulf between the great majority of Americans who enjoy the benefits of our unparalleled affluence and the minority who have been denied the opportunity to share in our abundance. We believe that the concepts of human dignity embodied in our Constitution and Bill of Rights must be asserted in this area to prevent this society from abandoning its poor.*

Questions to Which This Brief is Addressed

1. Are children who are denied relief under the AFDC program solely because of noncompliance with a residency requirement deprived of their right to due process of law, in violation of the Fifth and Fourteenth Amendment?

2. Does such denial of relief under the AFDC program impose an unconstitutional burden on freedom to travel?

Summary of Argument

IA. Children who starve because our government fails to provide them with relief are deprived of due process of law in violation of the Fifth and Fourteenth Amendments. The concept that government has an obligation to provide for persons in need is deeply imbedded in our governmental system. It was embodied in Sixteenth Century statutes that formed the basis of subsequent legislation adopted by the American colonies and states. The Social Security Act of 1935 implicitly acknowledged that the obligation to assist the poor extends to the national government.

B. Historically, the obligation has not been accompanied by recognition of the right of the poor person to demand assistance. One result has been widespread denial of assistance, in part through "settlement laws," the forerunner of residency requirements. Residency requirements have the effect of denying

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* We have been authorized by the National Board of the Young Women's Christian Association of the U. S. A. to inform the Court that it supports the position taken in this brief. The National Board of the Young Women's Christian Association of the U. S. A. is a corporation organized in 1907 pursuant to the laws of the State of New York and is entrusted with the continuing work of the Young Women's Christian Association of the U. S. A., an organization of autonomous member Associations. At present it is composed of 421 community and 443 student Associations with 1,439,372 members and 878,666 additional participants.

relief even where there is no alternative escape from starvation.

C. The resulting denial of assistance is a deprivation of property. Where it leaves children to starve, it must be regarded also as a deprivation of "life" as that term is used in the Fifth and Fourteenth Amendments. As shown below in Point II, the justifications for that deprivation are without merit. Hence, the deprivation is a denial of due process.

D. Our constitutional system requires recognition of an individual enforceable right to poor relief. Absent such a right, the Due Process Clauses cease to be a protection for the poor as well as the rich.

IIA. This Court has repeatedly upheld the right to travel as one based on the Constitution. It has specifically held that the States may not exclude indigents.

B. Residency requirements place a burden on the right to travel because those poor who would travel face the threat of starvation.

C. The right to travel is closely related to the constitutional rights of free expression and therefore cannot be restricted except for compelling reasons. No such compelling reasons appear here. The reasons usually given hardly rise higher than consideration of convenience. Moreover, residency requirements deal with the asserted evils by a blunderbuss technique that is constitutionally impermissible.*

A R G U M E N T

POINT I.

Children who starve because government fails to provide relief are deprived of due process of law, in violation of the Fifth and Fourteenth Amendments.

It is our position that a denial of AFDC assistance because of a residency requirement which may cause starvation and loss of life is a violation of the constitutional requirement of due process of law. Such a denial withholds assistance regardless of the reason for the applicant's presence in the state. Such an action is an arbitrary denial of property and, not inconceivably, of life, without due process of law.

A. The Obligation of Government to Provide for Persons in Need is Deeply Imbedded in Our Governmental System.

1. The test of what constitutes due process of law

In Powell v. Alabama, 287 U.S. 45, 65 (1932), this Court said:

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* This brief is not addressed to a third basis for challenging residency requirements, that they constitute a deprivation of equal protection of the laws. We believe that that challenge is also valid because of the absence of rational justification for the requirement.

> One test which has been applied to determine whether due process of law has been accorded in given instances is to ascertain what were the settled usages and modes of proceeding under the common and statute law of England before the Declaration of Independence, subject, however, to the qualification that they be shown not to have been unsuited to the civil and political condition of our ancestors by having been followed in this country after it became a nation.

Another test of the scope of the constitutional due process guarantees, probably the same in effect, is the requirement that government conform to "that whole community sense of 'decency and fairness' that has been woven by common experience into the fabric of acceptable conduct." Breithaupt v. Abram, 352 U.S. 432, 436 (1957). Due process bars governmental action which "shocks the conscience." Rochin v. California, 342 U.S. 165, 172 (1952). It requires protection of those rights that are "so rooted in the tradition and conscience of our people as to be ranked as fundamental." Id. at 169, citing Snyder v. Massachusetts, 291 U.S. 97, 105 (1934); see also Palko v. Connecticut, 302 U.S. 319, 325 (1937).

We submit that, by either of these tests, a statute that exposes children to the risk of starvation deprives them of due process of law.

2. The British antecedents

Provision for the basic needs of the poor has been recognized as a duty of society since biblical times.[1] For four hundred years this need has been recognized by Anglo-American law as an obligation of temporal government.

In 1572, Parliament passed a law (14 Elizabeth c. 5) which was a landmark in the development of governmental assistance to the poor.[2] It established as national policy that the poor must be provided for through monies raised by public taxation. Revision in 1597 (39 Elizabeth c. 3)[3] and, more important, in 1601 (43 Elizabeth c. 2) did much to establish the character of poor relief.

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1. BIBLE (King James Version), Deuteronomy 14:28, 29, 26:12; Matthew 25:31-46.

2. English law on the subject of poor relief is relevant here not only because it illuminates the due process concept but also because American laws for relief of the poor were shaped by the English antecedents. Riesenfeld, "The Formative Era of American Public Assistance Law," 43 Calif. L. Rev. 175, 177 (1955).

3. Id. at 180 et seq.

tenBroeck, Jacobus, "California's Dual System of Family Law:Its Origin, Development and Present Status," Part I, 16 Stanford L. Rev. 257, 258 (1964).[4]

Professor tenBroeck described the salient feature of that period (at 262):

> The central concept and great achievement of the Elizabethan poor law was the firm establishment of the principle of public responsibility to maintain the destitute. Through it, the final step was taken, permanently shifting a part of the burden to relieve economic distress from the ecclesiastical, private, and voluntary to the civil, public and compulsory. The assumption of responsibility, moreover, was made by the nation and its application was nationwide.

The obligation of government to insure survival and the role of the judiciary in providing relief to the poor is reflected in Gilbert's Act of 1782, summarized by Sidney and Beatrice Webb as follows (Webb, S. & B., ENGLISH LOCAL GOVERNMENT. English Poor Law History, Vol. 1, Longmans Green & Co. Ltd. (1927) at 171):

> * * * any applicant who could not get employment in the ordinary way should by the Poor Law Guardians--without explaining how--be provided with it and be fed and lodged until it could be given. Failing such relief, any Justice of the Peace was expressly empowered, after inquiry upon oath, to order "some weekly or other relief."

In sum, the government duty to provide for the poor was so firmly implanted that, towards the end of the 18th century, Blackstone could state in his COMMENTARIES (page 95, American Editions of J. B. Lippincott & Co. from the 19th London Edition, page 131, 12th ed., London, 1793):

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4. The principal section of 43 Elizabeth c. 2 provided:

> That the churchwardens of every parish, and four * * * substantial householders there * * * shall be called overseers of the poor of the same parish; and they * * * shall take order from time to time, by and with the consent of two or more * * * justices of peace * * * for setting to work all such persons, married or unmarried, having no means to maintain them, and use no ordinary and daily trade of life to get their living by: and also to raise* * * (by taxation of every inhabitant * * * and of every occupier of lands, houses * * * or saleable underwoods in the same parish * * *) a convenient stock of flax, hemp, wool, thread, iron and other necessary ware and stuff, to set the poor on work: and also competent sums of money for and towards the necessary relief of the lame, impotent, old, blind, and such others among them, being poor and not able to work, and also for the putting out of such children to be apprentices * * *. (As modernized by Professor Riesenfeld, id. at 178.)

> The law not only regards life and member and protects every man in the enjoyment of them, but also furnishes him with everything necessary for their support. For there is no man so indigent or wretched, but he may demand a supply sufficient for all the necessaries of life from the more opulent part of the community, by means of the several statutes enacted for the relief of the poor.

This statement appears in Book I, entitled "Of the Rights of Persons," Chapter I, entitled "Of the Absolute Rights of Individuals."

This "law of the land" was not confined to the homeland. An indication of England's concern that her colonial government provide for the needs of the poor is reflected in the request of the Committee for Trade and Foreign Plantations of the English Privy Council in 1680 for information as to provisions made in Connecticut for "relieving poor, decayed and impotent persons." Capen, HISTORICAL DEVELOPMENT OF THE POOR LAW OF CONNECTICUT (Columbia U. Press, 1905) at 22.

3. The American antecedents

A history of the reception of the English poor law into the thirteen original colonies, particularly with regard to government obligation to provide for the poor and the law of settlement is set forth by Riesenfeld (op. cit. supra at 203, et seq.). The early laws of the Massachusetts Bay Colony and New Plymouth clearly imposed the obligation on government officials (id. at 204-208).

A detailed history of the development of the poor law in Connecticut is obtained in Capen, op. cit. supra, passim. (See also Riesenfeld, supra, at 209-212, 226-228.) As early as 1640, the colony of New Haven had provided for its poor (Capen, op. cit. supra at 22-23). The two colonies of Connecticut and New Haven had been united in 1665. In 1673, the general court ordered as follows:

> * * * every town within this colony, shall maintain their own poor. * * * If any person come to live in any town in this government, and be there received and entertained three months, if by sickness, lameness or the like, he comes to want relief; he shall be provided for by that town wherein he was so long entertained, and shall be reputed their proper charge, unless such person has within the said three months been warned by the constable, or some one or more of the selectmen of that town, not there to abide without leave first obtained of the town, and certify the same to the next court of assistants who shall otherwise order the charge arising about him according to justice. (Capen, supra, at 29-30, referring to Law No. 57 of 1673.) [5]

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5. For developments in Pennsylvania, see Beitel, TREATISE ON THE POOR LAWS OF PENNSYLVANIA (T. & J. W. Thompson & Co., Pa. (1899)); Heffner, HISTORY OF POOR RELIEF LEGISLATION IN PENNSYLVANIA, 1682-1913, Holzapfel Publishing Co. (1913).

This public responsibility to support the destitute was also recognized in those states organized west of the Alleghany Mountains. Abbott, PUBLIC ASSISTANCE, AMERICAN PRINCIPLES AND POLICIES, Vol. 1 (1940), pp. 3-35. To give only one example (id. at 5), Kansas acknowledged this government responsibility in its first constitution in 1859 by providing, in Article vii, sec. 4:

> The respective counties of the State shall provide as may be prescribed by law for those inhabitants who, by reason of age, infirmity, or other misfortune, may have claims upon the sympathy and aid of society.

Thus England, the American colonies and the states regarded themselves as being legally obligated to provide for the poor. Justice Brewer was speaking of a principle by then fundamental to the entire country when he said, in State ex rel. Griffith v. Osawkee Twp., 14 Kan. 418, 421 (1875), prior to his elevation to this Court:

> The relief of the poor, the care of those who are unable to care for themselves, is among the unquestioned objects of public duty. In obedience to the impulses of common humanity, it is everywhere so recognized.

With the adoption of the Social Security Act of 1935, the involvement of government in providing basic needs assumed new dimensions. "The law established the individual's immediate welfare as a matter of national concern entitled to consideration in the deployment of national resources." Wedemeyer, J. M. and Moore, Percy, "The American Welfare System," 54 Calif. L. Rev. 326, 347 (1966). Adoption of the Act constituted recognition that participation of the national government was inevitable "* * * if the people were not to starve." Steward Machine Co. v. Davis, 301 U.S. 548, 586 (1937).

B. The Absence of an Individual Right to Enforce the Governmental Responsibility Results in Large-Scale Evasion of the Responsibility.

1. The denial of an individual right

While British and Anglo-American law thus recognized a governmental obligation toward the poor, it must be conceded that it did not recognize an individual right to enforce that obligation. As the Webbs pointed out, "What was enacted was not a right at all, but an obligation." Op. cit. supra, p. 401. Poverty was treated as a public nuisance, subject to abatement by public officials (ibid.).

Similarly, in this country, the obligation of the government to provide for the poor was not regarded as vesting a right in the individual poor person to compel government to meet its obligation through recourse to the courts.

> The English law has perhaps again influenced our American statutes and their interpretation on this point. In England it has long been an established legal principle that the duty of the local authority to relieve the poor is "a duty owed to the public and not to the poor person himself," and that "no action

can be brought * * * by the poor person if relief is refused him, or if an officer is negligent in giving relief." (Abbott, op. cit. supra, p. 20, citing W. Ivor Jennings, THE POOR LAW CODE (London, 1930), p. lxxvi.)

Cf. Reich, C., "The New Property," 73 Yale L. J. 733 (1964); Reich, C., "Individual Rights and Social Welfare: The Emerging Legal Issues," 74 Yale L. J. 1245 (1965).

2. The resulting denial of aid to the poor

The isolation of the obligation of government from the development of corresponding rights and duties has had disastrous results. Without enforcement of individual rights by court action, local administrators were free to limit relief in almost any way they saw fit. Chief among the limitations were the settlement laws, the direct ancestors of the present day residency requirements. tenBroeck, op. cit. supra, at 263. The resulting evils, from Elizabethan times to the present, are described by Professor tenBroeck (id. at 265):

> Only those who had been born in a community or had long lived there were eligible. Other poor persons were kept out or removed to the place of their settlement. The size of the taxing and paying unit thus was determinative. From the community's point of view it supported only its own. From the pauper's point of view, he was bound to the place of his misfortune, restricted in his free movement and his personal opportunity. From society's point of view, the economy was fragmented, rendering more difficult the solution of economic problems that were regional and national. All of this is true today.[6]

6. For other evils see Riesenfeld and Maxwell, MODERN SOCIAL LEGISLATION, 709 (1950):

> The need for or the actual receipt of assistance created * * * a veritable "pauper status." Thus the pauper was required to wear a badge with the letter P, a practice which was first given statutory sanction by the Pennsylvania Poor Law Amendment Act of 1718, 3 Pa. Stat. at L. 1712-1724, 221 (1896); he was required to be farmed out to the bidder at public auction, see, e.g., Indiana Poor Law of 1807 * * * he could be thrown into the poor-house against his will, see, e.g., Harrison v. Gilbert, 71 Conn. 724, 43 Atl. 190 (1899) (denying a writ of habeas corpus); he could and apparently still can, without violation of his constitutional guarantees, be forcibly removed to his place of settlement; Lovell v. Seeback, 45 Minn. 465, 48 N.W. 23 (1891); he lost the right to vote and still does under the constitution of Massachusetts, Mass. Const. Art. of Amendments III, and Texas, Tex. Const. Art. VI, Sec. 1.

Residency requirements are applied regardless of whether the rejected recipients have any alternative source of support for staying alive. As far as the state is concerned, these people are left to starve to death. If they are fortunate, they may obtain relief from a voluntary charity of an amount the charity feels it can afford. No voluntary organization is required to provide such relief. And when there are no private agencies or no money, people not receiving public relief may actually starve or freeze to death.

Thus, implicit in the defense of these three states to their right to use residency requirements as an absolute bar to AFDC payments, no matter how great the need of the applicant, is the proposition that the state may let children residing within its boundaries die for lack of such necessities as food and shelter.

AFDC is a last resort. The hardship which regularly results from its denial because of failure to meet residency requirements is aptly illustrated by the desperate situation Minnie Harrell and her three children face (one of the families in the District of Columbia case). Ill with cancer, unable to work, unable to continue staying at the small home of her brother (who has a wife and six children he is trying to support on wages of $1.60 per hour as a tire changer), the Child Welfare Division of the Department of Public Welfare of the District of Columbia can only suggest that Minnie Harrell consider placing her children in an orphanage.

Nowhere in the record of any of the three cases is there any suggestion that denial of AFDC benefits is dependent upon the availability of alternative relief programs for which the rejected AFDC applicants are eligible. The extent of failure of AFDC to meet the needs of the one child out of every five children in this country who lives below the poverty line is implicit in the following statement (Orshansky, "Counting the Poor: Another Look at the Poverty Profile," Social Security Bulletin, U. S. Dept. of Health, Education and Welfare, January, 1965, pp. 15-16):

> In contrast to this total of 15.6 million needy children, in December 1963 only 3.1 million children were receiving assistance in the form of aid to families with dependent children, the public program designed especially for them.

Children are kept off the welfare rolls and denied AFDC payments for many reasons. One of them is because such children fail to meet residency requirements.

C. The Denial of AFDC Relief Because of Residency Requirements Results in a Denial of Life and Property.

In 1964, there were 34.1 million Americans, of whom almost 15 million were children, whose income was below the poverty line.[7] Orshansky, "Recounting the

7. The poverty line is defined in Orshansky, "Counting the Poor," op. cit. supra, pp. 5-13. It is based on an "economy" food plan prepared by the Department of Agriculture for "temporary or emergency use when funds are low" (at p. 6) and allows an average of 70 cents per day per person for food and an additional $1.40 per day per person for all other items, including housing, medical care, clothing and carfare (p. 4).

Poor--A Five-Year Review," Social Security Bulletin, U. S. Dept. of Health, Education and Welfare, April 1966, pp. 12, 13. For these people, each day requires a choice between an adequate diet of the most economical type and some other necessity because there is not enough money for both. Of the 15 million children living below the poverty line in 1964, 5.7 million were under age six (ibid.).

Whether one regards the benefits provided pursuant to the categorical assistance programs of the Social Security Act as "rights" or "privileges," they must be recognized as basic to human survival. Unlike many other benefits provided by government, the Social Security Act programs provide only for needs basic to life and usually less than that. Although states establish minimum standards of health and decency the Act only requires assistance be furnished "as far as practicable under the conditions in such State." 42 U.S.C.A. Section 601. As a result many states pay only a percentage of their own minimum standard. The survival which these payments permit is commonly one in which the beneficiaries are ill housed, ill clothed and ill fed. As we have just been told by the National Advisory Commission on Civil Disorders (U. S. Riot Commission Report, Bantam Books ed. (1968), p. 458):

> This sum [an average of about $36 monthly for each recipient of AFDC] is well below the poverty subsistence level under any standard. The National Advisory Council on Public Welfare has commented:
>
> > "The national average provides little more than half the amounts admittedly required by a family for subsistence; in some low-income states, it is less than a quarter of that amount. The low public assistance payments contribute to the perpetuation of poverty and deprivation that extend into future generations."

We submit that the poor are plainly deprived of "property" when government withholds the relief it is responsible for supplying. The deprivation of life itself, however, is of greater concern. As we have shown, the residency requirement is imposed by the states without regard to the consequences to the individual family or its children. They are literally left to starve. Even if they escape death the resulting impairment of both mental and physical health must be viewed as a deprivation of "life" as that term is used in the Fifth and Fourteenth Amendments.[8]

We recognize, of course, that it is not enough to show that there has been a deprivation of life or property. The deprivation must be "without due process of law." Here, it is argued that the deprivation is not without due process because the residency requirement is reasonably designed to achieve proper public objectives. The various justifications given for the requirement are dealt with below (Point IIC) in the discussion of the restraint on the right to travel. The

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8. See New York Times, March 25, 1968, p. 47, "Hunger and Sickness Affect Mississippi Negro Children"; New York Post, March 27, 1968, p. 2, "Secret Report: 10 Million Go Hungry in U.S."

remaining point to be made here is that the denial of due process may not be upheld on the ground that the individual poor person has no right to obtain enforcement of the governmental responsibility.

D. Our Constitutional System Requires Recognition of an Individual Enforceable Right to Poor Relief.

We believe we have shown that the obligation of government to provide poor relief is so fundamental and of such long standing as to be regarded as part of the basic "law of the land" which is incorporated in the due process concept. It would be inconsistent with our system of law to recognize this responsibility while denying those who would benefit from it the right to enforce it.

Absent such a right, the Federal and state governments and their agents are free to adopt any rule they may choose to limit their performance of their recognized responsibility. This Court said in Jones v. Securities and Exchange Commission, 298 U. S. 1, 23-24 (1935):

> * * * to the precise extent that the mere will of an official or an official body is permitted to take the place of allowable official discretion or to supplant the standing law as a rule of human conduct, the government ceases to be one of laws and becomes an autocracy.

See also Justice Brandeis concurring in St. Joseph Stockyards Co. v. United States, 298 U.S. 38, 84 (1936); Justice Jackson concurring in Youngstown Sheet & Tool Co. v. Sawyer, 343 U.S. 579, 646 (1952).

The Due Process Clause has stood as a guarantee of the liberties of Americans largely because of its expanding enforcement of purely procedural rights. The fact that the right of the individual poor person to claim his due has not been recognized up to now is not a barrier to present recognition, if in fact the right is essential to assuring "decency and fairness." As this Court said in Wolf v. Colorado, 338 U.S. 25, 27 (1949):

> It is of the very nature of a free society to advance in its standards of what is deemed reasonable and right. Representing as it does a living principle, due process is not confined within a permanent catalogue of what may at a given time be deemed the limits or the essentials of fundamental rights.

See also Frank v. Maryland, 359 U.S. 360, 371 (1959). It is particularly appropriate that due process develops so as to protect the poor. As stated in Wolf, supra, 338 U.S. at 27:

> This Clause exacts from the States for the lowliest and the most outcast all that is "implicit in the concept of ordered liberty" (citing Palko v. Connecticut, 302 U.S. 319, 325 (1937)).

POINT II

Residency requirements place an unconstitutional burden on the right to travel.

Government cannot bargain with the poor so as to buy up basic rights of citizenship in exchange for the necessities of life. Residency requirements in effect take from the poor the right to travel, the right to make the most of job opportunity and freedom to associate with relatives and loved ones.

A. The Right to Travel

In United States v. Guest, 383 U.S. 745, 757 (1966), this Court said:

> The constitutional right to travel from one State to another, and necessarily to use the highways and other instrumentalities of interstate commerce in doing so, occupies a position fundamental to the concept of our Federal Union. It is a right that has been firmly established and repeatedly recognized.

Again at page 759, this Court said:

> Although there have been recurring differences in emphasis within the Court as to the source of the constitutional right of interstate travel, there is no need here to canvass those differences further. All have agreed that the right exists.

The importance attached by the Court to the right to travel is also reflected in cases dealing with international travel. Kent v. Dulles, 357 U.S. 116, 126 (1958); Aptheker v. Secretary of State, 378 U.S. 500, 505 (1964).

The right to travel includes the right to settle in a state. In Edwards v. People of the State of California, 314 U.S. 160 (1941), this Court held that a law making it a misdemeanor to assist in bringing into the state any indigent person who is not a resident of the state was unconstitutional. The defendant Edwards had assisted his indigent brother-in-law to enter California for the purpose of residing there. California argued that it could not bear the financial burden resulting from the migration of indigents to the state (at 168):

> Their coming here has alarmingly increased our taxes and the cost of welfare outlays, old age pensions, and the care of the criminal, the indigent sick, the blind and the insane.
>
> Should the States that have so long tolerated, and even fostered, the social conditions that have reduced their people to their state of poverty and wretchedness, be able to get rid of them by low relief and insignificant welfare allowances and drive them into California to become our public charges, upon our immeasurably higher standard of social services? Naturally, when these people can live on relief in California better than they can by working in Mississippi, Arkansas, Texas or Oklahoma, they will continue to come to this State.

This Court rejected that argument (at 173):

> The State asserts that the huge influx of migrants into California in recent years has resulted in problems of health, morals, and especially finance, the proportions of which are staggering. It is not for us to say that this is not true. We have repeatedly and recently affirmed, and we now reaffirm, that we do not consider it our function to pass upon the wisdom, need, or appropriateness of the legislative efforts of the States to solve such difficulties [citing cases].
>
> But this does not mean that there are no boundaries to the permissible area of State legislative activity. There are. And none is more certain than the prohibition against attempts on the part of any single State to isolate itself from difficulties common to all of them by restraining the transportation of persons and property across the borders.

Thus, this Court has made it clear that the poor have the right to travel as well as the rich. As Justice Jackson said, concurring in Edwards (at 185):

> Any measure which would divide our citizenry on the basis of property into one class free to move from state to state and another class that is poverty-bound to the place where it has suffered misfortune is not only at war with the habit and custom by which our country has expanded, but it is also a shortsighted blow at the security of property itself.

See also the concurring opinion of Justice Douglas (at 177).

B. The Burden on the Right to Travel Imposed by Residency Requirements

Residency requirements impair the right to travel when they burden its exercise by compelling forfeiture of government benefits. Here, as in Sherbert v. Verner, 374 U.S. 398 (1963), the citizen is forced to choose between the exercise of basic rights (there, the free exercise of religion) and the forfeiture of government benefits. The citizen is subjected to "a choice between the rock and the whirlpool." Frost & Frost Trucking Company v. Railroad Commission, 271 U.S. 583, 593 (1926).

This is precisely the predicament faced by AFDC recipients. The pressure to forego their right to travel is unmistakable. Denial of the basic benefits involved here derives solely from the exercise of the constitutionally protected right to travel.

This Court has consistently rejected distinctions based on the fact that the potential beneficiary is not prevented from exercising his basic rights, but merely deterred or inhibited. "The threat of sanctions may deter their exercise almost as potently as the actual application of sanctions." Aptheker, supra, 375 U.S. at 516, citing NAACP v. Button, 371 U.S. 415 (1963). Even a "chilling effect" on the exercise of basic rights is sufficient to condemn restrictive action. Dombrowski v. Pfister, 380 U.S. 479 (1965).

This is true where the benefits derivable from the state are far less valuable than those in question here. Indeed, even where the benefits are completely gratuitous and even ephemeral, they may not be subjected to conditions which "deter or inhibit" the exercise of basic rights. Speiser v. Randall, 357 U.S. 513 (1958) (a tax exemption conditioned on a loyalty oath).

The travels of the poor are already sufficiently encumbered by the fact of their poverty. As we show below in Point IIC, the poor travel for reasons far more basic than their affluent contemporaries.

It should be remembered that AFDC benefits are given only when the family has no alternative means of support. 42 U.S.C.A. §602(7). AFDC families cannot, in many cases, choose to forego the benefit and exercise the liberty to travel. Practically speaking, conditioning welfare benefits on residency tends to tie the poor to the place of their misfortune in the same manner as the English statutes regarding settlement and removal of the poor in the 18th Century. Those who do succeed in moving out of unsatisfactory circumstances often find themselves in a shocking position.

1. Some American citizens are stateless, having lost residence in one place without gaining it in another, and ineligible for assistance anywhere. Some of these people can never become eligible because in certain states they cannot gain residence unless they are self-supporting.

2. Others are sent back to their place of residence even when their return is undesirable from the point of view of the individual or the community. Simons, Saville H., "Services to Uprooted and Unsettled Families," in Social Welfare Forum (National Conference on Social Welfare, 1962, pp. 165, 171).

C. The Restrictions Placed on the Right to Travel by Residency Requirements Are Not Justified by Compelling Necessity.

Like most constitutional rights, the right to travel is subject to restriction in the public interest. Yet, this Court has made it plain that restrictions may not be lightly imposed or sustained.

This Court has frequently referred to "the preferred place given in our scheme to the great freedoms secured by the First Amendment." Thomas v. Collins, 323 U.S. 516, 530 (1945). As stated in Thomas, "Only the gravest abuses, endangering paramount interests, give occasion for permissible limitation" (323 U.S. at 530). In such cases, the "subordinating interest of the State must be compelling." National Association for the Advancement of Colored People v. Alabama, 357 U.S. 449, 463 (1958), quoting Justice Frankfurter concurring in Sweezey v. New Hampshire, 354 U.S. 234, 265 (1957). See also Marsh v. Alabama, 326 U.S. 501, 509 (1946); Prince v. Massachusetts, 321 U.S. 158, 164 (1944).

In Aptheker, this Court placed freedom to travel in the same category, saying (378 U.S. at 517):

> Similarly, since freedom of travel is a constitutional liberty closely related to rights of free speech and association, we believe that appellants in this case should not be required to assume the burden of demonstrating that Congress could not have written a statute constitutionally prohibiting their travel.

While residency requirements are not direct limitations on travel, when the choice is possible starvation if one does travel, the effect is little different from a direct prohibition.

Leeway may be given, presumably, for regulation by the states in areas of direct concern. When a state conditions the right to vote, or to become a member of the bar, on minimum residency, it can be concluded that, on balancing the indirect limitation on travel against the interest of the state, the state is legitimately protecting its electoral process or the functioning of its courts. Familiarity with conditions in the state is reasonably related to voting and familiarity with local law and court processes is reasonably related to the attorney function. In each case, the small limitation on travel is justified. But where, as here, the asserted interest of the state is balanced against the very life of a person, that interest must yield.

Moreover, we are dealing here with a national program, laid down in a national statute and funded primarily by the national government. The states that impose residency requirements are saying, in effect, that the benefits of this national program will be made available to those families who stay in their home states but not to those who exercise their right to travel-- to obtain jobs, to rejoin families or for any other reason, good or bad. We submit that this cannot be made a feature of a Federal program by the participating states. Not even the fact that the limitation may have been authorized by Congress (see 42 U.S.C.A. §602(b)) can immunize it against the constitutional right to travel from state to state.

In considering whether the residency limitation on freedom to travel is justified by compelling public interests, it should be noted, first, that it does not further but rather frustrates the purpose of the Federal statutory scheme. The purpose of the AFDC program is set forth in the Federal statute creating the program and authorizing Federal contributions to its financing:

> For the purpose of encouraging the care of dependent children in their own homes or in the homes of relatives by enabling each State to furnish financial assistance and rehabilitation and other services, as far as practicable under the conditions in such State, to needy dependent children and the parents or relatives with whom they are living to help maintain and strengthen family life and to help such parents or relatives to attain or retain capability for the maximum self-support and personal independence consistent with the maintenance of continuing parental care and protection, there is authorized to be appropriated for each fiscal year a sum sufficient to carry out the purposes of this subchapter. Social Security Act of 1935, § 401, as amended, 42 U.S.C.A. § 601.

Residency requirements bear no relationship whatever to this purpose. In fact, failure to provide assistance payments for one year will frustrate the purpose of the statute, often resulting in the break-up of homes prior to the time the family can become eligible for welfare. For example, the Harrell family in the District of Columbia case has been advised that since Mrs. Harrell and her three children are not eligible for AFDC payments, Mrs. Harrell should consider breaking up her home and placing her children in an orphanage. (See letter

dated April 20, 1967 from Mrs. Jane Berry, Supervisor, D.C. Department of Public Welfare, annexed to the complaint in No. 1134 as Exhibit A.) The three-judge court in Delaware, recently holding that the AFDC residency requirement in Delaware is unconstitutional, said:

> It is evident to us that as to these families living in Delaware for less than one year the denial of public assistance fails to carry out the stated purposes for the Public Assistance Code. It in fact tends to frustrate them. The residency requirement prevents prompt assistance to some of the State's needy and distressed and to that extent is the antithesis of "humane." It also necessarily results in pressure on the solidarity of the family unit. Nor given these circumstances is it an acceptable answer to say that until they are here one year such persons are not a part of the state's needy and distressed. The discrimination based on length of residency thus finds no constitutional justification in the purpose declared in the statute itself. Green v. Department of Public Welfare, 270 F. Supp. 173, at 177 (D. Del., 1967).

What, then, are the justifications offered for residency requirements? They appear to be as follows: (1) the need to discourage poor persons from coming into the state or remaining in the state; (2) the need to make it unprofitable to come to a state to obtain higher AFDC benefits; (3) the need to provide an objective test of whether there is an intent to become a permanent resident of the state; and (4) the need to obtain certainty in preparing state budgets.

The first of these justifications is squarely in conflict with this Court's decision in the Edwards case. The direct holding of that case was that states may not exclude indigents.

The claim that residency requirements are needed in order to facilitate budgeting demeans our system of constitutionally protected rights. It is sufficient to say, as this Court said in Carrington v. Rash, 380 U.S. 89, 96 (1965), that "States may not casually deprive a class of individuals" of a valuable right (there, the right to vote) "because of some remote administrative benefit to the State."

The other two justifications are dealt with in detail in the decisions of the courts below in these three cases, as well as in decisions by other three-judge District Courts in cases now pending. We make but a few points here.

The legislative history of most if not all residency provisions reveals an assumption that indigents move from state to state to achieve higher welfare benefits and a further assumption that a residency requirement will halt or impede such movement (see Opinion of the court below in No. 813, App. 26a). Not only is the premise that people move to a state for the purpose of obtaining welfare assistance demonstrably false, but also the purpose of deterring movement fails completely. As Simons wrote several years ago (op. cit. supra, p. 174):

> All evidence shows this not so. People move primarily to secure employment, to be with relatives, sometimes to find a more favorable climate, or in order to cope with emotional problems. California, Arizona and Florida have the highest residence requirements permitted, but they continue to have the highest immigration in the country. On the other hand, in New York State even before the Anti-Abuse Law went into effect, when there was no legal residence requirement for public assistance, less than 2 per cent of the cases receiving assistance had been in the state less than one year, even though New York has high assistance standards and is surrounded by states that make lower payments.

Simon's statements are supported by statistics compiled by Robert J. Lampman from 1950 and 1960 census figures. "Population Change and Poverty Reduction, 1947-1975," in Fishman, L. (ed.), POVERTY AND AFFLUENCE (1966), pp. 36-37. Moreover, there is no indication from states that have repealed residency statutes of any increase in the number of in-migrants seeking a welfare bounty.

The simple fact is that poor people move for a variety of reasons. By far the largest population shift of recent decades has been that of the Southern Negro. That shift has been due primarily to the displacement of Negroes from Southern agriculture and increases in industrial employment in the North, as the National Advisory Commission on Civil Disorders made clear in its recent Report (op. cit. supra, pp. 236-242). See also, Myrdal, AN AMERICAN DILEMMA, pp. 188-9, 191, 193-6, 251 (1944).

Undoubtedly, some people move to obtain higher welfare benefits, but it should be noted that this is not true of any of the plaintiffs before this Court or in other cases challenging residency requirements in lower courts. For example, Vivian Thompson (in No. 813), Gloria Jean Brown, Clay Mae Legrant, Minnie Harrell (in No. 1134) and Mrs. Loretta Ramos (Ramos v. Health & Social Service Board, 276 F. Supp. 474 (E.D. Wisc. 1967)) and their children came to the respective jurisdictions to be near to or live with relatives. Mr. Green (Green v. Dept. of Public Welfare, supra) came to take a job as a construction laborer.

In any event, the residency requirement punishes not only those who may conceivably move for higher welfare payments but also the family looking for work and even the man who comes to the state having a job which ends for reasons beyond his control. The good are thus punished in order to get to the few bad. This blunderbuss technique is not constitutionally permissible, particularly where rights of freedom are involved. Elfbrandt v. Russell, 384 U.S. 11, 18-19 (1966); Shelton v. Tucker, 364 U.S. 479, 488 (1960), and cases there cited. As this Court said in N.A.A.C.P. v. Button, supra, 371 U.S. at 438:

> Broad prophylactic rules in the area of free expression are suspect. [Citations omitted.] Precision of regulation must be the touchstone in an area so closely touching our most precious freedoms.

We submit that the various justifications given for the residency requirement do not reveal that "compelling" interest of the state which alone can justify curtailment of constitutional freedoms. N.A.A.C.P. v. Alabama, supra. For that reason, the requirement must be held invalid.

Conclusion

It is respectfully submitted that the judgments below in each of these cases should be affirmed.

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NO. 1134

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1967

WALTER E. WASHINGTON, ET AL., APPELLANTS

V.

MINNIE HARRELL, ET AL., APPELLEES

ON APPEAL FROM THE UNITED STATES
DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

BRIEF FOR APPELLEES

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1967

No. 1134

WALTER E. WASHINGTON, et al., Appellants

v.

MINNIE HARRELL, et al., Appellees

ON APPEAL FROM THE UNITED STATES
DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

BRIEF FOR APPELLEES

OPINIONS BELOW

The opinions of the district court (A. 56-71, 71-87) are reported at 279 F.Supp. 22.[1/]

1/ The opinion reported at 279 F.Supp. 22 is captioned Harrell, et al. v. Tobriner, et al. After the opinion was filed, the parties moved, pursuant to Rule 25 (d)(1), Federal Rules of Civil Procedure, to substitute as party defendant Walter E. Washington for Walter N. Tobriner. The motion was granted in an order filed on November 28, 1967.

JURISDICTION

The decree of the three-judge district court declaring unconstitutional District of Columbia Code, §§ 3-203(a) and (b) and District of Columbia Department of Public Welfare Handbook of Public Assistance, EL 9.1, III, B, 3, and permanently enjoining their enforcement was entered on November 26, 1967. Notices of appeal were filed on December 22, 1967, and probable jurisdiction was noted on March 4, 1968. The jurisdiction of this Court is conferred by 28 U.S.C. 1253 which provides for direct appeals from decisions of three-judge district courts.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment to the Constitution of the United States provides in pertinent part that:

> No person shall . . . be deprived of life, liberty, or property, without due process of law; . . .

D. C. Code, § 3-203, provides in pertinent part that:

> Public assistance shall be awarded to or on behalf of any needy individual who either (a) has resided in the District for one year immediately preceding the date of filing his application for such assistance; or (b) who was born within one year immediately preceding the application for such aid, if the parent or other relative with whom the child is living has resided in the District for one year immediately preceding the birth; . . . .

QUESTION PRESENTED

Whether the provisions of D. C. Code, §3-203 which preclude the awarding of public assistance to persons

who have not resided in the District of Columbia for one year immediately preceding the date of filing an application for assistance violate the Constitution of the United States.

STATEMENT

A. The Pleadings and Procedure

These proceedings were commenced on June 12, 1967, when appellee Minnie Harrell[2/] filed a complaint[3/] in the United States District Court for the District of Columbia requesting that appellants be permanently enjoined from enforcing the provisions of the District of Columbia Code, §3-203. That statute provides that a person must be a resident of the District of Columbia for one year as a condition for applying for or obtaining Aid to Families with Dependent Children (AFDC), Aid to the Blind (AB), Aid to Permanently and Totally Disabled (APTD) or General Public Assistance (GPA).[4/] The complaint alleged that to classify needy residents of the District of Columbia and their children on the basis of whether they have lived in the District more than one year, and to refuse to process the applications of those who have lived here less than one year solely for that reason is to classify arbitrarily in violation of equal protection of the laws guaranteed by the Fifth Amendment (A. 10). On June 20, 1967, and July 7, 1967,

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2/ On April 2, 1968, Mrs. Harrell died. On April 5, 1968, counsel for appellees filed in this Court a paper entitled "A Suggestion of Death and Motion to List the Name of Clay Mae Legrant in Place of the Name of Minnie Harrell in the Caption of the Above-Entitled Case".

3/ An amended complaint was filed on August 1, 1967 (A. 4).

4/ The requirement in D.C.Code, §3-203, that a person shall not be eligible for Old Age Assistance (OAA) unless he has resided in the District of Columbia for five years or more within the nine years immediately preceding the application for such assistance and has resided continuously in the District for one year immediately preceding the application, is not involved in this litigation. A similar OAA residence requirement of the State of Arizona is currently under attack in Porter v. Graham, No. Civ-2348 Tucson (D.Ariz. 1968). An order preliminarily enjoining enforcement of section 46-252 of the Arizona Revised Statutes (the OAA provision) was entered on January 24, 1968.

appellees Barley and Brown, respectively, filed complaints requesting similar relief (A. 18, 32). In all three cases appellees requested preliminary injunctions (A. 1, 15, 29).

On July 26, 1967, an order was entered consolidating the Barley and Brown cases with the Harrell case for all future action. Pursuant to a request for the appointment of a three judge district court, the Chief Judge of the Court of Appeals designated the judges to serve on that court on July 31, 1967. Following the filing of appellants' motion to dismiss or for summary judgment (A. 54) and appellees' counter-motion for summary judgment (A. 55), a hearing was held on September 7, 1967.[5/] On September 11, 1967, the court below enjoined appellants pendente lite from denying public assistance to appellees because of their failure to meet the one-year durational residence requirement (A. 50).[6/]

In an opinion entered on November 8, 1967, the court below ruled unconstitutional the durational residence requirement and ordered the parties to seek agreement on the form of judgment (A. 56). The decree was entered on November 28, 1967 (A. 88) and a notice of appeal to this Court was filed on December 22, 1967.

5/ On August 21, 1967, the motion of appellee Clay Mae Legrant for leave to intervene as a party plaintiff in the Harrell and Brown cases was granted. The intervenor's complaint (A. 42) was filed on September 15, 1967.

6/ On October 16, 1967, the court below entered an order permitting the suits to be maintained as class actions. (A. 3).

B. The Appellees

1. Minnie Harrell

Before moving to the District of Columbia with her three children in September 1966, appellee Harrell resided in Suffolk County, New York (A. 7). She had been receiving AFDC on behalf of her three children since being separated from her husband in April 1966 (A. 7). Becoming ill with cancer, she decided to come to Washington so that in case of hospitalization her children could be cared for by her brother and sister, both of whom live in Washington.[7/]

In December 1966, Mrs. Harrell was informally advised by the District of Columbia Department of Public Welfare that she and her children would be ineligible for assistance until they had lived in Washington for one continuous year (A. 8). In May 1967, she formally applied for public assistance and received a written rejection on the ground that her family did not meet the durational residence requirement (A. 8).

2. Vera M. Barley

Appellee Barley first resided in the District of Columbia in 1935 (A. 21). After an absence of several years

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7/ See appellee Harrell's Affidavit in Support of Motion for Preliminary Injunction, which is part of the original record in this Court. Mrs. Harrell stated:

> My family has always been close, and I knew that my brother, Mr. George Lassiter, and my sister, Mrs. Erma Nowell, who both live in Washington, D.C., would help me care for my children. I also thought I might be able to make a better life for myself and my children in Washington. That is why I came to Washington, D. C., in September of 1966. I have stayed here ever since that date and have no desire to return to New York. I regard Washington, D.C., as my home, because my children and I need to be together with my family very much. Id. at 1-2.

she returned to Washington in March 1941, at which time she was suffering from mental illness (A. 21). A month later, she was committed by court order to Saint Elizabeth's Hospital where she remained continuously until the decision by the court below (A. 21).

Since 1965, Mrs. Barley has been deemed competent[8/] and has desired to live in the District of Columbia in a foster care home, a plan advised by her doctors (A. 21).[9/] Therefore, in January 1967, officials at Saint Elizabeth's Hospital referred Mrs. Barley to the Department of Public Welfare for the purpose of establishing her eligibility for public assistance (A. 22). The goal of the hospital was to obtain financial support for her from the Department of Public Welfare so that she could be placed in a foster care home (A. 22).[10/] The application was denied in February 1967, because of her failure to establish residence in Washington for one year immediately prior to her hospitalization in April 1941 (A. 22). An administrative appeal sustained the

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8/ See D.C.Code, §21-564(b).

9/ In an Affidavit in Support of Motion for Preliminary Injunction, which is a part of the original record in this Court, Mrs. Barley stated:

> I have lived here for the last 26 years. I wish to remain here. I do not regard any other state as my home. I have no property elsewhere, and my relatives in California are unable to take care of me. For the last few years I have never thought I would like to live elsewhere. Id. at 2.

10/ Because of Mrs. Barley's age (A. 21), employment was not a realistic goal. See Letter to Mr. Joseph Dougan from Mrs. Alice Cohen, dated June 30, 1967, which is attached to the complaint in the Barley case as Exhibit E and is part of the original record in this Court.

denial of her application on the ground that she failed to meet the one-year durational residence requirement (A. 22).[11/]

3. Gloria Jean Brown

Before moving to the District of Columbia in February 1966, appellee Brown lived in a public housing project with her mother and two of her three children in Fort Smith, Arkansas (A. 35). When her mother moved to Oklahoma to obtain employment, she was informed that she was ineligible for public housing because she was a minor (A. 35). Having no place to live, she decided to move to Washington where she had resided as a young girl and where her oldest child had been living since 1962 with her father (A. 35).[12/]

11/ In addition to the durational residence statute, appellee Barley challenged the constitutionality of District of Columbia Department of Public Welfare Handbook of Public Assistance Policies and Procedures, HPA II, Section EL. 9.1, III, B, 3, which provided that time spent in an institution as a public charge during the first year a person lives in the District of Columbia does not count toward meeting the District's one-year durational residence requirement. In its opinion and decree, the court below ruled this regulation invalid (A. 70, 88).

12/ In an Affidavit in Support of Motion for Preliminary Injunction, which is part of the original record in this Court, appellee Brown stated:

> I came to Washington not only because my home in Arkansas had been broken and my son was living here, but also because I consider Washington my home. My parents moved to Washington when I was an infant. I attended Cleveland School through the third grade, from 1950 to 1954. From 1955 to 1957 I attended Bundy, Monroe and Lovejoy Schools in Washington. I lived in Fort Smith with my mother during the 1954-55 school year and from 1957 until 1962. In 1962, I returned to my father's family and began tenth grade at Roosevelt, in Washington. In addition to my father and son, I have four sisters, two brothers, six aunts, seven uncles, and a grandmother in Washington. Id at 2.

Appellee Brown arrived in Washington in February 1966, having left her two daughters in the temporary care of her grandmother in Fort Smith (A. 35). In August 1966, the daughters rejoined their mother in Washington (A. 35). In November of that year, shortly before the birth of her fourth child, she applied for public assistance but was told that she and her children were ineligible because they had not lived in Washington for one year (A. 35).[13/] She reapplied for assistance for herself and her oldest child and was accepted for AFDC in February 1967 (A. 35-36). She was told, however, that her two older daughters would not be eligible for assistance until August 1967, and that her newborn child would not be eligible until his first birthday in November 1967 (A. 36).[14/] In June 1967, she submitted a formal application for public assistance on behalf of her three youngest children and was informed that they were ineligible for failure to satisfy the durational residence requirement (A. 36).

13/ According to her Affidavit in Support of Motion for Preliminary Injunction, a Welfare Department official "suggested placing the children in Junior Village, but I told him I did not want to do that because I did not want to become separated from my family." Id. at 3. Junior Village is the District's institution for dependent and neglected children.

14/ Pursuant to D.C.Code, §3-203(b), a child born in the District of Columbia must satisfy the one-year durational residence requirement unless, at the time of his birth, his mother has lived in the District for at least one year. Thus, in the case of Mrs. Brown's youngest child, he would not be eligible for public assistance until his first birthday since his mother, at the time of his birth, had resided in Washington for only nine months.

4. Clay Mae Legrant

Appellee Legrant moved to the District of Columbia from South Carolina with her two children in March 1967, after the death of her mother (A. 45). She planned to live with her sister and expected that her brother, upon his discharge from the armed forces, would be returning to Washington where he lived before entering the Army (A. 45).[15/] Being pregnant and in ill health, she was unable to obtain regular employment; consequently, she applied for public assistance in July 1967 (A. 45). She received a notice of ineligibility on the ground that she and her children did not satisfy the one-year durational residence law (A.45).

15/ Appellee Legrant had previously lived in Washington with her sister from November 1965, to August 1966, when she returned to South Carolina to care for her mother who had had a stroke. When her mother died in March 1967, her father moved in with her older brother and his eight children but there was insufficient space in the four-room house for her and her family. See appellee Legrant's Affidavit in Support of Motion for Preliminary Injunction, which is part of the original record in this Court, at 2.

SUMMARY OF ARGUMENT

I. This Court has ruled that legislative classifications in a statute must be reasonable in light of the statute's purposes. Furthermore, the statutory purpose itself must be a lawful one. Where these criteria are not satisfied, the statute conflicts with the Constitution's guarantee of equal protection of the laws.

Although the District of Columbia's public assistance durational residence law was enacted by the Congress, this fact should not preclude the Court from applying this equal protection test when judging its constitutionality. Although the Fifth Amendment, unlike the Fourteenth, contains no equal protection clause as such, the guarantee against depriving persons of life, liberty or property without due process of law includes the equal protection concepts separately stated in the Fourteenth Amendment. The Court has recognized that both equal protection and due process have a common core. The legislative history of Congressional debates shortly before and at the time of the adoption of the Fourteenth Amendment, as well as early state court decisions, reveal that the concept of equal protection of the laws has always been considered to be encompassed by the due process clause of the Fifth Amendment.

This construction of the due process clause is particularly sound when judging the constitutionality of a statute enacted by Congress in its capacity as the legislature for the District of Columbia. If the Court were to render unconstitutional, under the equal protection clause of the Fourteenth Amendment, a state law, it would be unthinkable that a similar law attacked under the Fifth Amendment would be sustained simply because it was enacted by Congress as the District of Columbia's legislature.

In judging whether a statute should be declared unconstitutional, the Court has developed two distinct sets of standards. When the law in question takes the form of an economic regulation, the Court has held that it may not be found invalid if any state of facts reasonably can be conceived that would justify it. But when the effect of a law is to impinge upon important individual liberties protected by the first eight Amendments and the Fourteenth, the Court insists that much closer scrutiny be given to the statute in question in order to insure that it bears a reasonable relationship to the achievement of the governmental purpose asserted as its justification. The need for such close scrutiny is heightened where the persons subject to the legislation are composed essentially of minority groups who, because of factors such as race or poverty, do not have the normal opportunity to make their grievances known through the ordinary political processes.

The District's public assistance durational residence law affects fundamental freedoms of a group of persons characterized by its extreme poverty and its inaccessibility to the normal political processes. Denying public assistance to the appellees and the class which they represent is a threat to their very existence and may result in break-up of family units, sickness, malnutrition or death. Furthermore, the effect of denying a person public assistance solely because he has recently moved to the District of Columbia is to penalize his exercise of the constitutional rights of movement and association.

A law which has the effect of impinging on so many personal rights is the very type which, under the decisions of this Court, must be subjected to the strictest scrutiny when determining whether the classification in question should be upheld. Particularly should this be so in the instant case where the statutory classification involved has recently been examined by a number of federal courts which, with one exception, have ruled it unconstitutional.

Appellants defend the durational residence law on the ground that it is reasonably related to the accomplishment of several purposes. First, appellants argue that the law is required to prevent migration to the District of Columbia of paupers seeking higher welfare payments. Although this purpose seems to accord with the historical reasons for such durational residence laws, it is both a legally impermissible justification and a factually unfounded one. This Court has ruled that barring paupers from a jurisdiction is not a lawful state purpose, whether or not an influx of such persons creates administrative or financial difficulties. In any event, the supposed facts which underlie this asserted purpose--that persons move from state to state in order to obtain higher welfare payments--have merely been asserted by appellants. All available evidence points to precisely the opposite conclusion and reveals that people move for reasons connected with job opportunity, association with family, and the like. Hence, this supposed purpose for the law is both legally impermissible and factually untrue.

Appellants further assert that the law serves the purpose of providing an objective test of residence for persons applying for public assistance. Although this purpose is not <u>per se</u> an

unlawful one, it must be accomplished by means which do not unnecessarily inhibit or penalize the exercise of constitutional rights. The law in question, however, does not meet this test since it sweeps before it all persons who have lived in the state for less than one year without regard to the true nature of their residence. The facts of this case illustrate the overbreadth of the law as an objective test of residence since the undisputed evidence is that appellees severed all ties with other jurisdictions before moving to the District of Columbia and they intend to remain here permanently.

Finally, appellants suggest that no purpose at all need be offered to justify the classification in question since the statute confers a mere noncontractual benefit which does not have to be given in the first place. But the Court has consistently rejected the notion that infringement of constitutional rights may be justified on such grounds. The fact that a government may decline to extend to its citizens the enjoyment of a particular set of benefits does not mean that it may attach unconstitutional conditions to the benefits that are given.

In summary, all of the purposes which, according to appellants, underlie and justify the one-year durational residence law are either unlawful _per se_, ones which must be accomplished by narrower means, or are factually untrue. Hence, none of them may be invoked to save the classification on the ground that it is reasonably related to the accomplishment of these purposes. Since no purpose remains to justify the statute, it must fall as an arbitrary classification proscribed by the due process clause of the Fifth Amendment.

II. Appellants contend that an affirmance of the decision below will undermine the validity of durational residence

requirements in other areas of the law. No such result follows, however, because public assistance durational residence statutes are fundamentally different from such requirements in other areas.

States commonly have durational residence requirements in four major areas not relating to public assistance--voting, public office, divorce and licensing. Requirements in these first two areas are frequently justified on the ground that the state has a valid interest in making certain that voters and elected officials are familiar with the issues. Durational residence requirements in divorce laws are upheld on the grounds that they insure that defendants receive adequate notice and that they protect society against hastily brought suits, thereby helping to preserve family stability. Such requirements in the licensing area, although frequently struck down, may be justified because of the strong interest of the state in upholding standards of professional persons and others who offer their services to the general public.

The reasons discussed by the courts in justifying durational residence tests in other areas demonstrate the uniqueness of such provisions in public assistance laws. As already discussed, the statute in question is justified only by reference to objectives which are unlawful or factually unsupportable. Furthermore, durational tests in welfare have far more disastrous consequences to those whom they affect than do such provisions in other areas. In addition, durational residence tests in welfare flaunt the primary purpose of the overall statutory program of which they are a part, namely giving assistance to the needy. Durational tests in other areas,

however, are usually consistent with and help promote the result sought by related statutory provisions. Finally, public assistance durational residence tests are unique with respect to the extent of the federal government's involvement in programs of which they are a part. Under such circumstances, a state's interest in protecting its durational residence statute is much less.

Because of the special features of durational residence laws in welfare, particularly concerning their purposes and the severity of their impact, decisions concerning their validity will have little, in any, relevance in determining the validity of other types of durational residence laws.

ARGUMENT

I. The Provisions of D.C.Code, §3-203 which Preclude the Awarding of Public Assistance to Persons Who Have Not Resided in the District of Columbia For One Year Immediately Preceding the Date of Filing An Application for Assistance Violate the Equal Protection of the Laws Guaranteed by the Due Process Clause of the Fifth Amendment.

A. The Requirements of Equal Protection

It is axiomatic that a law "which affects the activities of some groups differently from the way in which it affects the activities of other groups" is not necessarily proscribed by the requirements of equal protection. Kotch v. Board of River Port Pilot Comm'rs, 330 U.S. 552, 556 (1947). The Court long ago set forth the test for judging equal protection violations in legislative classifications when it stated that classification

> must always rest upon some difference which bears a reasonable and just relation to the act in respect to which the classification is proposed, and can never be made arbitrarily and without any such basis. Gulf, Colorado & Santa Fe Ry. v. Ellis, 165 U.S. 150, 155 (1897).

This test, which the Court has reiterated on countless occasions,[16/] was more simply put in McLaughlin v. Florida, 379 U.S. 184, 191 (1964):

16/ See e.g. Southern Ry. v. Greene, 216 U.S. 400, 417 (1910); Atchison & Santa Fe Ry. v. Vosburg, 238 U.S. 56, 59 (1915); Royster Guano Co. v. Virginia, 253 U.S. 412, 415 (1920); Truax v. Corrigan, 257 U.S. 312, 337 (1921); Air Way Corp. v. Day, 266 U.S. 71, 85 (1924); Power Mfg. Co. v. Saunders, 274 U.S. 490, 493 (1927); Louisville Gas Co. v. Coleman, 277 U.S. 32, 37 (1928); Ohio Oil Co. v. Conway, 281 U.S. 146, 160 (1930); Metropolitan Co. v. Brownell, 294 U.S. 580, 583 (1935); Hartford Co. v. Harrison, 301 U.S. 459, 462 (1937); Asbury Hosp. v. Cass County, 326 U.S. 207, 214 (1945); Morey v. Doud, 354 U.S. 457, 465 (1957); McLaughlin v. Florida, 379 U.S. 184, 190 (1964); Baxstrom v. Herold, 383 U.S. 107, 111 (1966); Rinaldi v. Yeager, 384 U.S. 305, 309 (1966).

> The courts must . . . determine the question whether the classifications drawn in a statute are reasonable in light of its purpose. . . .

See also Carrington v. Rash, 380 U.S. 89, 93 (1965).[17/]

The Court has further pointed out that one basis for judging the reasonableness of the classification is whether it "implies action consistent with the legitimate interests of the State. . . ." Truax v. Raich, 239 U.S. 33, 42 (1915). A statutory classification not reasonably related to a proper governmental objective will not survive the constitutional test. Bolling v. Sharpe, 347 U.S. 497 (1954).[18/]

The fact that the statute here in question is an Act of Congress rather than a state law should not preclude the application to this case of the equal protection test just outlined. It is literally true, of course, that the Fifth Amendment, "unlike the Fourteenth, has no equal protection clause," Currin v. Wallace, 306 U.S. 1, 14 (1939).[19/]

17/ The more restrictive view of equal protection, expressed in such opinions of the Court as Pace v. Alabama, 106 U.S. 583, 585 (1882) and Powell v. Pennsylvania, 127 U.S. 678, 687 (1888), that the constitutional provision is not offended so long as the statute treats equally all to whom it is applicable, was soon discarded. See McLaughlin v. Florida, supra, at 190.

18/ See also Note, Discriminations against the Poor and the Fourteenth Amendment, 81 Harv.L. Rev. 435, 437 (1968).

19/ The Court has made similar statements in LaBelle Iron Works v. United States, 256 U.S. 377, 392 (1921); Steward Mach. Co. v. Davis, 301 U.S. 548, 584 (1937); United States v. Carolene Prods. Co., 304 U.S. 144, 151 (1938); Sunshine Coal Co. v. Adkins, 310 U.S. 381, 401 (1940); Helvering v. Lerner Stores Co., 314 U.S. 463, 468 (1941); Detroit Bank v. United States, 317 U.S. 325, 337 (1942). Cf. Brushaber v. Union Pac. R.R. Co., 240 U.S. 1, 24 (1916). But none of those decisions suggested that the statutory provision which the Court upheld against an attack under the Fifth Amendment would have fallen if the equal protection clause of the Fourteenth Amendment had been applicable. In each of the
(fn. 19 continued on p. 18)

But the Court, while acknowledging this fact in Bolling v. Sharpe, supra, emphasized that both equal protection and due process stem from "our American ideal of fairness." 347 U.S. at 499.[20/] It concluded that, in view of its decision prohibiting states from maintaining racially segregated public schools,[21/] "it would be unthinkable that the same Constitution would impose a lesser duty on the Federal Government." 347 U.S. at 500. Cf. Hurd v. Hodge, 334 U.S. 24 (1948).[22/] Furthermore, in other cases, the Court has applied equal protection standards in judging

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fn. 19 continued
cases, the Fifth Amendment equal protection claim was raised in the context of alleged discriminatory taxation or regulation of business--areas in which the states, too, have traditionally been given "the utmost latitude under the Equal Protection Clause . . . in defining categories of classification." Allied Stores v. Bowers, 358 U.S. 522, 532 (1959) (Brennan, J., concurring); see also Nashville, C. & S. L. Ry. v. Browning, 310 U.S. 362, 370 (1940); Tigner v. Texas, 310 U.S. 141, 149 (1940). Thus, it is likely that if the statutes in question had been those of a state rather than the federal government, the Fourteenth Amendment equal protection argument would have been rejected as well. See, e.g., Steward Mach. Co. v. Davis, supra, at 584; United States v. Carolene Prods. Co., supra, at 151. These cases, then, would not support the argument that equal protection claims against acts of Congress are governed by wholly different standards than similar claims against acts of states. See also District of Columbia v. Brooke, 214 U.S. 138, 150 (1909).

20/ See Griswold v. Connecticut, 381 U.S. 479, 517 (1965) (Black, J., dissenting).

21/ See Brown v. Bd. of Educ., 347 U.S. 483 (1954).

22/ In Hurd, the Court had before it the constitutionality of judicial enforcement of racially restrictive covenants in the District of Columbia, an action which the Court had previously ruled would be violative of equal protection if taken by state courts. See Shelley v. Kramer, 334 U.S. 1 (1948). The Court concluded:

> It is not consistent with the public policy in the United States to permit federal courts in the Nation's capital to exercise general equitable powers to compel action denied the state courts where such state action has been held to be violative of the guaranty of the equal protection of the laws. 334 U.S. at 35.

the constitutionality of classifications in federal laws. United States v. Petrillo, 332 U.S. 1, 8 (1947); Schneider v. Rusk, 377 U.S. 163, 168 (1964).[23/]

The Congressional debates shortly before and at the time of adoption of the Fourteenth Amendment indicate that the concept of equal protection of the laws was considered to be already an integral part of the due process clause of the Fifth Amendment at the time the Fourteenth Amendment was being considered. Several years before the debates on the Amendment, Representative Bingham, "the Madison of the first section of the Fourteenth Amendment", Adamson v. California, 332 U.S. 46, 74 (1947)(Black, J., dissenting), in discussing the matter of slavery in the new states of the Union said:

> It must be apparent that the absolute equality of all, and the equal protection of each, are principles of our Constitution, which ought to be observed and enforced in the organization and admission of new States. The Constitution provides, as we have seen, that no person shall be deprived of life, liberty, or property, without due process of law. It makes no distinction either on account of complexion or birth--it secures these rights to all persons within its exclusive jurisdiction. This is equality. Cong. Globe, 34th Cong., 3d Sess., App. 140 (1857).[24/]

23/ The Court applied equal protection standards in these two cases, although, unlike Bolling v. Sharpe, supra, they did not involve distinctions based on race. See also Pennsylvania R.R. Co. v. Day, 360 U.S. 548, 554 (1959) (Black, J., dissenting); Harvith, Federal Equal Protection and Welfare Assistance, 31 Albany L. Rev. 210, 220-21 (1967).

24/ In a number of opinions rendered before the adoption of the Fourteenth Amendment, state courts interpreted "due process of law" and "law of the land" provisions in the state constitutions (both of these terms convey the same meaning--see Murray's Lessee v. Hoboken Land and Improvement Co., 59 U.S. 276 (1856)) to include the guarantee of equal protection of the laws. See e.g., Vanzant v. Waddell, 2 Yerg. 260 (Tenn. 1826); State Bank v. Cooper, 2 Yerg. 599 (Tenn. 1831); Reed v. Wright, 2 Greene 15 (Iowa 1849); Sears v. Cottrell, 5 Mich. 251 (1858); Holden v. James, 11 Mass. 396 (1814).

In the debates on the Amendment itself, Congressman Bingham's view is stated by others. Thus Representative John J. Farnsworth of Illinois, while discussing the equal protection provision, said:

> "Equal protection of the laws;" can there be any well-founded objection to this? Is not this the very foundation of a Republican government? Is it not the undeniable right of every subject of the government to receive "equal protection of the laws" with every other subject? How can he have and enjoy equal rights of "life, liberty, and the pursuit of happiness" without "equal protection of the laws?" This is so self-evident and just that no man whose soul is not too cramped and dwarfed to hold the smallest germ of justice can fail to see and appreciate it." 25/ Cong. Globe, 39th Cong., 1st Sess., 2539 (1866).

25/ See also the statements by Senator Poland of Vermont, Cong. Globe, 39th Cong., 1st Sess., p. 2961 (1866); Representative Higby of California, Cong. Globe, 39th Cong., 1st Sess., 1054 (1866); Representative Stevens of Pennsylvania, Cong. Globe, 39th Cong., 1st Sess., 2459 (1866); Representative Bingham, Cong. Globe, 39th Cong., 1st Sess., 1094 (1866).

The fact that the drafters of the Fourteenth Amendment referred separately in the same section to depriving persons of life, liberty or property without due process and denying them equal protection, does not demonstrate that the two clauses must have different meanings. A similar argument, adopted by the Court in Hurtado v. California, 110 U.S. 516, 534-35 (1884), contended that, since the Fifth Amendment contains both a due process provision and a requirement for grand jury procedure, canons of construction require that the former provision be read not to include the latter so that no part of the amendment be superfluous. Hence the Court concluded that since the grand jury provision was not part of Fifth Amendment due process, it could not be a part of Fourteenth Amendment due process and, therefore, had no application to state criminal proceedings. This construction argument has since been discredited. See Powell v. Alabama, 287 U.S. 45, 65-67 (1932); Gideon v. Wainwright, 372 U.S. 335, 341 (1963); Chicago, Burlington & Quincy R.R. Co. v. Chicago, 166 U.S. 226, 241 (1897); Malloy v. Hogan, 378 U.S. 1, 6 (1964). The latter two cases hold that the just compensation and the self-incrimination provisions of the Fifth Amendment apply to the states through the due process clause of the Fourteenth. See also Cichos v. Indiana, 385 U.S. 76 (1967). And see Mott, Due Process of Law (Bobbs-Merrill Co. 1926) 276.

In light of these cases and legislative history, the court below correctly ruled that "[d]enial of equal protection offends the Due Process Clause of the Fifth Amendment, applicable to this jurisdiction, as well as the Equal Protection Clause of the Fourteenth, applicable in terms to the States" (A. 61). This construction of the Fifth Amendment is especially sound in cases, such as the instant one, where a challenge is made to a statute enacted by Congress in its capacity as the District of Columbia's local legislature. As the Court of Appeals for the District of Columbia Circuit noted in Hamilton National Bank of Washington v. District of Columbia, 176 F.2d 624, 630 (C.A.D.C. 1949):

> [I]t is true, and ought to be true, that "The Fifth Amendment as applied to the District of Columbia implies equal protection of the laws." Sims v. Rives, 1936, 66 App. D.C. 24, 84 F.2d 871, 878; Lappin v. District of Columbia, 1903, 22 App. D.C. 68. We say this is true because this court so held in the two cases just cited. We say it ought to be true because the due process of the Fifth Amendment should include or imply for the inhabitants of the District of Columbia equal protection of the laws enacted by Congress as the local legislature of the District. It is unthinkable that Congress, enacting statutes applicable only in this jurisdiction, does not violate the due process clause of the Fifth Amendment if it denies the people of this District equal protection of the laws, just as a state legislature violates the "equal protection" clause of the Fourteenth Amendment if it does the same thing.[26]

26/ In a case decided only two months ago, Bolton v. Harris, __F.2d__ (C.A.D.C. 1968), appellant challenged the mandatory commitment provisions of D.C. Code, §24-301(d) and the release provisions of D.C.Code, §24-301(e) on the ground that they violated equal protection by not affording safeguards available for persons civilly committed. Although construing the provisions to include these safeguards to save them against constitutional attack, Chief Judge Bazelon, speaking for a unanimous court, initially noted: "The equal protection guarantee applies to the federal government through the Fifth Amendment." ___F.2d___ n. 3. Accord Dixon v. District of Columbia, ___F.2d___ n.3 (C.A. D.C. 1968).

The law here in question imposes a durational residence test on welfare recipients in the District of Columbia in the same fashion that such test is imposed by most of the states. If the Court were to render unconstitutional such statutes when passed by state legislatures,[27/] it surely "would be unthinkable that the same Constitution would impose a lesser duty on the federal government." Bolling v. Sharpe, supra, at 500.[28/]

B. The Applicable Standards for Judging Equal Protection Violations.

Before applying the test of equal protection to the facts of this case, it is imperative to establish the relevant standards for judging constitutional violations. The Court has, from the beginning, emphasized the need for great restraint in declaring statutes unconstitutional. See Fletcher v. Peck, 10 U.S. (6 Cranch) 48, 72 (1810).

27/ The constitutionality of state durational residence laws in public assistance programs is squarely before the Court in the two cases to be argued with the instant one. See Shapiro v. Thompson, No. 813, Oct. term, 1967, and Reynolds v. Smith, No. 1138, Oct. term, 1967.

28/ Although it might be argued that it is not illogical that Congress, acting as the national legislature in our federal system, should not be limited in its courses of action in the same respects that the Constitution limits the states which play their particular and different roles, such an analysis should not be applied where the federal government exercises responsibilities as a state government. Assuming that there are sufficient differences between the concept of due process and the concept of equal protection to permit durational residence laws to be upheld under the former and invalidated under the latter, such a result would so "shock the conscience", Rochin v. California, 342 U.S. 165, 172 (1952), as to require invalidation under due process. The obvious unfairness of a constitutional rule which would make it illegal for a local government in Virginia to impose a durational residence test but make it legal for another local government across the river in the District of Columbia to impose such a test calls for the Court, as it did in Bolling v. Sharpe, supra, to find in the concepts of due process and equal protection enough common ground to avoid such a result.

Thus, the Court has emphasized that the burden of attacking a legislative act lies wholly "on him who denies its constitutionality." Brown v. Maryland, 25 U.S. (12 Wheat.) 266, 277 (1827). In its early decisions construing statutes challenged under equal protection and due process principles of the Fourteenth Amendment, the Court repeated this rule. See, e.g., Munn v. Illinois, 94 U.S. 113, 132 (1876). In Lindsley v. Natural Carbonic Gas Co., 220 U.S. 61 (1911), the Court sought to distill the relevant rules by which equal protection arguments must be tested, noting, inter alia, that the person attacking the statutory classification "must carry the burden of showing that it does not rest upon any reasonable basis, but is essentially arbitrary" and that "if any state of facts reasonably can be conceived that would sustain it, the existence of that state of facts at the time the law was enacted must be assumed." 220 U.S. at 78-79.[29/]

The Court has recognized, however, that not all constitutional challenges should be reviewed in precisely the same way. Thus, in Board of Education v. Barnette, 319

29/ The latter of these two rules, which has been stated on innumerable occasions since, see, e.g., Rast v. Van Deman & Lewis Co., 240 U.S. 342, 357 (1916); Crescent Cotton Oil Co. v. Mississippi, 257 U.S. 129, 137 (1921); Heisler v. Thomas Colliery Co., 260 U.S. 245, 255 (1922); State Bd. of Tax Comm. v. Jackson, 283 U.S. 527, 537 (1931); Metropolitan Co. v. Brownell, 294 U.S. 580, 584 (1935); Carmichael v. Southern Coal & Coke Co., 301 U.S. 495, 509 (1937); United States v. Carolene Prods. Co., supra, at 154; Asbury Hosp. v. Cass County, supra, at 215; Morey v. Doud, supra, at 464; Allied Stores v. Bowers, 358 U.S. 522, 528 (1959); McGowan v. Maryland, 366 U.S. 420, 426 (1961), appears to have been first stated in Munn v. Illinois, supra, at 132. In Munn an equal protection challenge was made to an Illinois statute seeking to regulate public warehouses and the storage and inspection of grain. In the cases just cited which repeat the Munn language, all involve the matter of taxation or economic regulation.

U.S. 624 (1943), involving the constitutionality of the public school flag salute requirement, the Court noted:

> The right of a State to regulate, for example, a public utility may well include, so far as the due process test is concerned, power to impose all of the restrictions which the legislature may have a "rational basis" for adopting. But freedoms of speech and of press, of assembly and of worship may not be infringed on such slender grounds. 319 U.S. at 639.

Central to that case was a First Amendment right which, as Mr. Justice Frankfurter, concurring in Kovacs v. Cooper, 336 U.S. 77, 95 (1949), stated "come[s] to this Court with a momentum for respect lacking when appeal is made to liberties which derive merely from shifting economic arrangements." Those cases, and many before and since, recognize that the freedoms of the First Amendment are of such importance that

> [w]hen it is shown that state action threatens significantly to impinge upon constitutionally protected freedom it becomes the duty of this Court to determine whether the action bears a reasonable relationship to the achievement of the governmental purpose asserted as its justification. Bates v. Little Rock, 361 U.S. 516, 525 (1960).

See also NAACP v. Alabama, 357 U.S. 449 (1958); see generally McKay, The Preference for Freedom, 34 N.Y.U.L. Rev. 1182 (1959).

It is not only in the First Amendment area that the Court gives especially close scrutiny to claims of violations of constitutional rights. Thus, in United States v. Carolene Prods. Co., supra, the Court noted that

> [t]here may be narrower scope for operation of the presumption of constitutionality when legislation appears on its face to be within a specific prohibition of the Constitution, such as those of the first ten amendments, which are deemed equally specific when held to be embraced within the Fourteenth. 304 U.S. at 152 n. 4.

Furthermore, the Court has taken the same approach in examining certain kinds of challenges based on equal protection.[30/] Thus, in cases involving statutes imposing classifications based on race, the Court has refused to uphold them if their only justification is that they might "serve a rational purpose." Loving v. Virginia, 388 U.S. 1, 8 (1967). See also McLaughlin v. Florida, supra.

But the Court has not confined this approach merely to classifications based on race. In Skinner v. Oklahoma, 316 U.S. 535 (1942), involving a law requiring the sterilization of "habitual criminals," but specifically exempting certain offenders such as embezzlers, the Court noted that because a basic liberty was involved, "strict scrutiny of the classification which a State makes in a sterilization law is essential . . ." to insure that no person is denied equal protection of the laws. 316 U.S. at 541. More recently, in Harper v. Board of Elections, 383 U.S. 663 (1966), the Court ruled unconstitutional Virginia's poll tax. Noting that "lines drawn on the basis of wealth or property . . . are traditionally disfavored," the Court stated:

30/ It has only been in comparatively recent times that the equal protection clause has been used with frequency to vindicate individual civil rights. Its traditional use has concerned the imposition of limitations on the power of states to regulate economic matters. Thus, it is not surprising that, in the equal protection area, opinions of the Court emphasizing that special scrutiny will be given to statutory classifications impinging on important individual freedoms are of a relatively recent vintage. See Harris, The Quest for Equality (La. State Univ. 1960), in which the author studied 554 decisions of the Court in which the equal protection clause was invoked. He points out that 76.9% of them dealt with legislation affecting economic interests. See id. at 59.

> We have long been mindful that where fundamental rights and liberties are asserted under the Equal Protection Clause, classifications which might invade or restrain them must be closely scrutinized and carefully confined. 383 U.S. at 668, 670.[31]

In summary, numerous decisions of the Court involving rights asserted both under the First Amendment and under the equal protection clause make it clear that when legislative classifications impinge upon important liberties, the Court will take an especially close look at the rights involved and require the state to do more than show that some state of facts might reasonably be conceived to justify the discrimination. In examining the nature of the discrimination in the instant case, it is important to keep in mind the individual rights involved and the effect the classification has on them.

The Court's insistence on careful scrutiny of statutes which impinge upon fundamental rights has been accompanied by a second approach to constitutional adjudication which, although more recent in development, is of

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31/ See also Griswold v. Connecticut, 381 U.S. 479 (1965). There the Court struck down a Connecticut law prohibiting the use of any device to prevent conception. Mr. Justice Goldberg, in a concurring opinion joined by the Chief Justice and Mr. Justice Brennan, noted:

> In a long series of cases this Court has held that where fundamental personal liberties are involved, they may not be abridged by the states simply on a showing that a regulatory statute has some rational relationship to the effectuation of a proper state purpose. 381 U.S. at 497.

And see 381 U.S. at 503 (White, J., concurring.)

great relevance to this case. In Harper v. Board of Elections, supra, the Court made special mention of the fact that "[l]ines drawn on the basis of wealth or property, like those of race . . . are traditionally disfavored." 383 U.S. at 668. The statute in Harper, by requiring the payment of a fee to vote, very directly placed a special burden on the poor. But whether or not the burden is placed directly or indirectly, the Court has examined with great care statutes and practices which tend to affect the poor more harshly than the rich.

Thus, in Griffin v. Illinois, 351 U.S. 12 (1956), the Court upheld petitioner's contention that the failure of the state to provide him, at no cost, a transcript of his criminal trial so that he might take an appeal, violated the provisions of the Fourteenth Amendment. This conclusion was reached despite the fact that no Illinois law placed any more restriction on petitioner in bringing his appeal than on any other potential appellant. Petitioner's difficulty lay in the fact that he was poor. Hence, a law which made no provision for giving him a free transcript burdened him in a very special way.[32/] In a somewhat different setting, Mr. Justice White,

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32/ The Griffin approach has been applied in a number of other criminal cases. See e.g., Rinaldi v. Yeager, 384 U.S. 305 (1966); Douglas v. California, 372 U.S. 353 (1963); Lane v. Brown, 372 U.S. 477 (1963); Draper v. Washington, 372 U.S. 487 (1963); Smith v. Bennett, 365 U.S. 708 (1961); McCrary v. Indiana, 364 U.S. 277 (1960); Douglas v. Greene, 363 U.S. 192 (1960); Burns v. Ohio, 360 U.S. 252 (1959); Ross v. Schneckloth, 357 U.S. 575 (1958); Eskridge v. Board of Prison Terms & Paroles, 357 U.S. 214 (1958).

concurring in Griswold v. Connecticut, supra, recently noted:

> The anti-use statute, together with the general aiding and abetting statute, prohibits doctors from affording advice to married persons on proper and effective methods of birth control. . . . And the clear effect of these statutes, as enforced, is to deny disadvantaged citizens of Connecticut, those without either adequate knowledge or resources to obtain private counseling, access to medical assistance and up-to-date information in respect to proper methods of birth control . . . . [A] statute with these effects bears a substantial burden of justification when attacked under the Fourteenth Amendment. 381 U.S. at 503. [33]

The underlying approach of these cases was well stated in the recent decision involving segregation of the races in the District of Columbia school system. After noting that careful scrutiny is used to examine practices which particularly affect disadvantaged minorities, the court stated:

> The explanation for this additional scrutiny of practices which, although not directly discriminatory, nevertheless fall harshly on such groups relates to the judicial attitude toward legislative and administrative judgments. Judicial deference to these judgments is predicated in the confidence courts have that they are just resolutions of conflicting interests. This confidence is often misplaced when the vital interests of the poor and of racial minorities are involved. For these groups are not always assured of a full and fair hearing through the ordinary political processes, . . . because of the abiding danger that the power structure . . . may incline to pay little heed to even the deserving interests of a politically voiceless and invisible minority. These considerations impel a closer judicial surveillance and review of administrative judgments adversely affecting

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[33] See also Williams v. Shaffer, 385 U.S. 1037 (1967) (Douglas, J., with whom the Chief Justice concurred, dissenting from the denial of certiorari).

> racial minorities and the poor, than would otherwise be necessary. Hobson v. Hansen, 269 F.Supp. 401, 507-08 (D.D.C. 1967).[34/]

As appellees demonstrate in Section I.C., infra, the durational residence law has the effect of placing even greater burdens on the already desperate economic plight of the persons who are affected by the law. In such circumstances, the Court should subject to closer scrutiny a law which "impinges on critical personal interests . . . ." Snell v. Wyman, ___F.Supp.___,[35/] (S.D.N.Y. 1968) (Kaufman, J., dissenting).

34/ The reference of the court in Hobson to the need for special scrutiny of practices which may not be examined through the ordinary political processes recalls the suggestion of this Court in United States v. Carolene Prods. Co., supra, at 152 n. 4, that legislation which restricts the political process, thereby blocking the very method needed to repeal undesirable legislation, may be subject to more exacting judicial scrutiny than other kinds of legislation. The Court there had in mind restrictions on the right to vote, dissemination of information, interferences with political organizations and the like. But for persons in desperate economic straits, their power to repeal legislation which accentuates their difficulties may, as a practical matter, be as nonexistent as that of the group which finds that the political processes have been more formally restricted. In either case, the Court, recognizing the difficulty of bringing change through the normal operation of the legislative system, should subject the legislation in question to more exacting judicial scrutiny. See also State Highway Dep't v. Barnwell Bros., 303 U.S. 177, 185 n. 2 (1938).

35/ In that case, the court had before it the constitutionality of New York laws and regulations which require welfare recipients to repay the costs of assistance benefits out of specified kinds of assets. Although the majority upheld the provision, it explicitly distinguished the recent cases involving public assistance durational residence requirements. Without implying any criticism of the result reached by the majority in that case, appellees suggest that the standard for judging equal protection violations which Circuit Judge Kaufman invoked in his dissent is the appropriate one to apply here.

C. The Nature of the Equal Protection Violation

D.C. Code, §3-203(a) establishes two classes of persons: those who have resided in the District of Columbia for at least one year and those who have resided here for less than one year.[36/] The former group is eligible to be considered for public assistance and the latter group is not. To determine whether the court below applied correct standards in ruling that the classification was not reasonably related to a proper governmental objective,[37/] it is necessary to examine whether the durational residence law impinges on fundamental personal freedoms of a disadvantaged and voiceless minority. As appellees will demonstrate, the statute has this very effect and hence the district court's approach, as well as its conclusions, was sound.

36/ It is important to bear in mind that the statute is a durational residence requirement, not a requirement that a person be a resident.

37/ As noted earlier, see fn.11, supra, the court below also ruled unconstitutional a Department of Public Welfare regulation which provided that time spent in an institution as a public charge during the first year a person lives in the District does not count toward meeting the durational residence requirement. See District of Columbia Handbook of Public Assistance Policies and Procedures, HPA II, EL 9.1, III, B, 3. As applied to appellee Barley, , this regulation required that she must not only live in the District but prove her "mettle" by living on her own for eleven months (appellants count toward the one year requirement the month she lived in the District before entering the hospital--see A. 21) before she could receive assistance. Because she was without funds to support herself, enforcement of the regulation required her continued institutionalization. Such a subclassification of resident individuals which places additional restrictions on the payment of assistance to persons solely because they become dependent on state institutions during their first year in the District is without any rational justification and a manifest violation of the due process provision of the Fifth Amendment.

1. The Effect of the Legislative Classification on the Appellees and the Class Which They Represent.

a. The Right to Life

The central effect of the durational residence law is to threaten the most basic right of all, the right to life itself. Persons who apply for public assistance are, by definition, in economically desperate straits. Those without any means of financial support who are denied public assistance are being denied money payments which are used to provide the very basic essentials for subsistence. At worst, denial of assistance may lead directly to malnutrition, sickness and death. In other cases the results may be hardly less serious, placing in the balance "all that makes life worth living." Ng Fung Ho v. White, 259 U.S. 276, 284 (1922). As the court below noted:

> The spread over a year's time of the evils which public assistance seeks to combat may mean that aid, when it becomes available, will be too late: Too late to prevent the separation of a family into foster homes or Junior Villages; too late to heal sickness due to malnutrition or exposure; too late to help a boy from succumbing to crime. (A. 64). 38/

38/ The economic hardships created by the durational residence law are made even more severe by the method of its application. Under Department of Public Welfare regulations in effect until the decision of the court below, a child moving to the District to join his mother had to satisfy the one year residence requirement whether or not his mother had already lived here a year and was receiving public assistance for herself and her other children. Furthermore, a child who was absent from the District for more than one year, with certain narrow exceptions, lost his residence and had to reside here a full year again in order to regain eligibility for assistance even though his mother never left the District. See Department of Public Welfare Handbook of Public Assistance Policies (fn.38 continued on p.32)

The tragic effect of this denial of assistance was recently recognized in the report of the President's National Advisory Commission on Civil Disorders. In discussing the "most tension-producing statutory requirements" in the American public welfare system, the Commission stated:

> Third, in most states, there is a residency requirement, generally averaging around a year, before a person is eligible to receive welfare. These state regulations were enacted to discourage persons from moving from one state to another to take advantage of higher welfare payments. In fact, they appear to have had little, if any, impact on migration and have frequently served to prevent those in greatest need--desperately poor families arriving in a strange city--from receiving the boost that might give them a fresh start. Report of the National Advisory Commission on Civil Disorders (The New York Times Co., 1968) at 459-60.

This description is borne out in the instant case. Appellee Harrell and her three children, prior to the entry of the preliminary injunction by the court below, were forced to live with her brother, his wife, and their six children in a four-bedroom house. She had to rely completely on a private charitable organization for food, hardly a dependable long-term arrangement. She was faced with the decision of whether to accept the Welfare Department's invitation to give up her children to the District of Columbia's Junior Village. 39/

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fn. 38 continued
and Procedures, HPA II, §§ EL 9.1, I, C; EL 9.1, III, B, 5. As previously noted, see fn. 14, supra, an infant born in the District would not be eligible for assistance until its first birthday if, at the time of birth, its mother has not resided in the District for one year. See D.C. Code, §3-203(b).

39/ See appellee Harrell's Affidavit in Support of Motion for Preliminary Injunction at 2-4. See also Letter to Laurens Silver from Jane Berry, dated April 20, 1967, which is attached to the Harrell complaint as Exhibit A and is part of the original record in this Court.

The plights of appellees Brown and Legrant were equally desperate.[40/] When a legislative classification has the effect of placing such additional burdens on a class of persons characterized by its extreme poverty and a practical inability to escape from the problems which the classification creates, the Court gives close scrutiny and requires full justification before permitting such a result. See Griswold v. Connecticut, supra; Harper v. Board of Elections, supra; United States v. Carolene Prods. Co., supra; Skinner v. Oklahoma, supra.

40/ Appellee Brown, in her Affidavit in Support of Motion for Preliminary Injunction, stated:

> My situation has never seemed so desperate. We have no money for shoes, for clothing of any sort. What furniture we have was left behind by the former tenant of our apartment. I do not know from month to month how I will be able to purchase food stamps. Id. at 4-5.

Appellee Legrant's Affidavit in Support of Motion for Preliminary Injunction stated:

> Our living situation right now is desperate since we will be forced to leave the apartment on Second Street any day. The conditions have been especially bad there since all but one of the other apartments have been vacated and boarded up. The roof leaks into the living room and the bathroom and there are many rats and roaches; but I and my children have no other place to go. . . . I have no money and no source of support . . . . I am frightened about the welfare of my children; I am concerned because we do not know where we are going to live and because we do not have enough money for food. Id. at 2-3.

The fourth appellee, Vera Barley, was not in these desperate economic straits because of her residence in a mental hospital. But although her situation was not the economically precarious one usually faced by the newcomer seeking welfare assistance, she nevertheless was forced to remain in a mental hospital contrary to the advice of her doctors (A. 21).

b. Freedom of Movement

The durational residence law precludes the payment of public assistance to any person who, within the past one year, has moved to the District of Columbia from another jurisdiction without regard to whether or not he is a permanent resident of this jurisdiction.[41/] The net result of the law is to deny a statutory benefit to a class solely for the reason that its members have recently moved from some part of the United States to the District of Columbia. Because of the movement, the penalty of automatic ineligibility for public assistance is imposed.

Freedom of movement is, of course, a constitutionally protected right. Although there have been differences as to its precise source, see United States v. Guest, 383 U.S. 745, 759 (1966), its existence is no longer in dispute. See Crandall v. Nevada, 73 U.S. (6 Wall.) 35 (1868); Edwards v. California, 314 U.S. 160 (1941); Kent v. Dulles, 357 U.S. 116 (1958); Aptheker v. Secretary of State, 378 U.S. 500 (1964); Zemel v. Rusk, 381 U.S. 1 (1965). In Aptheker,

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41/ As the court below noted, "it is not disputed that the plaintiffs are bona fide domiciliaries of the District . . . ." (A.70) There is no question that appellees, after they arrived in the District of Columbia, met the legal requirements of residence for other purposes. See Kristensen v. McGrath, 179 F.2d 796 (C.A.D.C. 1949); District of Columbia v. Fleming, 217 F.2d 18 (C.A.D.C. 1954); D'Elia & Marks Co. v. Lyon, 31 A.2d 647 (Mun. App. D.C. 1943). See also the Department of Health Education and Welfare's Handbook of Public Assistance Administration which provides that a person

> shall be considered [for public assistance eligibility purposes] to have his residence at the place where he is living, if he is found to be living there voluntarily and not for a temporary purpose, that is, with no intention of presently removing therefrom. An intent to return to a place of former residence at some indefinite time in the future cannot be construed as meaning that he does not have residence at the place where he is currently living. Pt. IV, §3620.

See also Pt. IV, §3651.

the Court indicated that this freedom "is a constitutional liberty closely related to rights of free speech and association. . . ." 387 U.S. at 517.[42/]

It is consitutionally irrelevant whether the durational residence law affects freedom of movement by directly barring the entry of a person or, as here, by imposing a penalty solely because the entry is made.[43/] The imposition of a

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42/ In Edwards v. California, supra, Justice Jackson noted in a concurring opinion that the right of movement protected by the Constitution includes not only temporary travel but movement "for the establishment of permanent residence therein and for gaining resultant citizenship thereof." 314 U.S. at 183. It was movement for the purpose of settling in a new jurisdiction that appellees here were exercising.

43/ Either approach is likely to have the same effect on the class which appellees represent. A poor person who travels to Washington for the purpose of settling there cannot live without food to eat and shelter over his head. The inevitable effect of a law which denies assistance, no matter how desperately needed, simply because of recent settlement, is to pressure the individual to return to the place from which he came. See Truax v. Raich, 239 U.S. 33 (1915), where the Court struck down as violative of equal protection a law which made it a crime for any company or individual employing more than five workers to have a labor force made up of less than 80% native born citizens of the United States or qualified electors. The Court stated: "The assertion of an authority to deny to aliens the opportunity of earning a livelihood when lawfully admitted to the State would be tantamount to the assertion of the right to deny them entrance and abode, for in ordinary cases they cannot live where they cannot work." 239 U.S. at 42. See also Supplement to Brief for Appellee on Reargument in Edwards v. California, supra, at 59-60, 66, 70-71, 74-75, 78, 81 & 83-84, which indicated that the usual method for enforcing the California law making it a criminal offense to assist a pauper to enter the state was to agree to suspend sentence on condition that the defendant would bring about the pauper's removal from the state. Cf. District of Columbia Department of Public Welfare, Handbook of Public Assistance Policies and Procedures, HPA II, AP 4.3, which details the procedure for transporting indigents out of the District and back to the state from which they came.

penalty on those who exercise a constitutional right may be no more permissible than to forbid a person to exercise the right in the first place. See Harman v. Forssenius, 380 U.S. 528, 540 (1965); Sherbert v. Verner, 374 U.S. 398, 406 (1963); United States v. Jackson, __U.S.__, 36 U.S.L. Week 4277 (1968). The Constitution protects against "sophisticated as well as simple-minded modes of discrimination." Lane v. Wilson, 307 U.S. 268, 275 (1939). Assuming that a penalty which is imposed on a class 44/ because its members have exercised the right of movement is not per se unconstitutional, see Zemel v. Rusk, supra, at 14-16, 45/ when the court judges the constitutionality of a law which necessarily has this effect, it should closely scrutinize such a classification and require that it be justified by substantial reasons.

C. The Right of Association

In addition to imposing a penalty on the exercise of freedom of movement, the durational residence law penalizes many persons who have exercised another fundamental freedom, the right of association. See NAACP v. Alabama, 357 U.S. 449 (1958); Bates v. Little Rock, 361 U.S. 516 (1960); Shelton v. Tucker, 364 U.S. 479 (1960); Louisiana ex rel. Gremillion v. NAACP, 366 U.S. 293 (1961); NAACP v. Button, 371 U.S. 415 (1963); NAACP v. Alabama, 377 U.S. 288 (1964);

44/ That the classification in question here penalizes by denying a statutory benefit as opposed to a constitutional right does not make it any the less a penalty. See Sherbert v. Verner, supra, at 406. See section I.D.2.c., infra.

45/ The fact that the penalty of ineligibility for public assistance is imposed solely for the reason that appellees exercised the constitutional right of movement suggests that the classification might be unconstitutional, not only because it is unreasonably related to the statute's purposes, see section I.D., infra, but because the classification is per se unconstitutional. See McLaughlin v. Florida, supra, at 198 (Stewart, J., concurring.)

Dombrowski v. Pfister, 380 U.S. 479 (1965); Griswold v. Connecticut, supra; DeGregory v. Attorney General, 383 U.S. 825 (1966); Roberts v. Clement, 252 F.Supp. 835, 848 (E.D. Tenn. 1966)(Darr, J., concurring). The relevance of the right of association to the durational residence law is particularly striking here. The desire to associate with family was a major reason for the decision of appellees Harrell and Brown to come to Washington.[46/] Although the right of association which the Court has protected has taken many forms, none should be more worth protecting than the right of a person to associate with his family.[47/] Like freedom of movement, a classification which has the effect of penalizing persons[48/] because they have sought to enjoy the right of association may indeed be valid where the interest of the state is sufficiently compelling. But where such a right is necessarily involved, the state must do more than rest on the mere assertion that the classification is not patently arbitrary.

46/ See fns .7 and 12, supra.

47/ This fact is emphasized at the conclusion of the Court's opinion in Griswold v. Connecticut, supra: "Marriage is a coming together for better or for worse, hopefully enduring, and intimate to the degree of being sacred. It is an association that promotes a way of life, not causes; a harmony in living, not political faiths; a bilateral loyalty, not commercial or social projects. Yet it is an association for as noble a purpose as any involved in our prior decisions." 381 U.S. at 486.

48/ The persons penalized are not only the parents, but the children who, as in the case of Mrs. Harrell, were brought to Washington so that they could be close to the homes of their aunt and uncle who could help care for them. See fn. 7, supra.

2. The Court Below Applied Correct Standards in Ruling That The Durational Residence Statute Violates Equal Protection.

In ruling the durational residence law unconstitutional, the court below correctly recognized that

> the human terms of the problem permit the court somewhat greater latitude in deciding that this difference in the treatment of those in our midst who are in need amounts to unequal protection of the laws than if treatment were with respect to some matter less critical to their living conditions (A. 71).49/

The foregoing analysis of the effect the durational residence law has on basic rights of the persons who come within its ambit clearly demonstrates that the court below was correct in requiring a compelling justification by the appellants to sustain the classification. Particularly should this be so in light of the nearly unanimous view of the courts that have

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49/ Appellants find this reasoning to be the "basic flaw" in the court's opinion because "it ignores the constitutional standards applicable to benefit legislation and applies instead those applicable in cases which involve preferred freedoms." Brief for Appellants at 7. Appellants point to the court's reliance on Sherbert v. Verner, supra, as illustrative of its erroneous approach since Sherbert, unlike the instant case, according to appellants, involved the preferred rights of the First Amendment. With due respect to appellants' analysis, appellees suggest that it contains three basic flaws. First, it views incorrectly the facts of this case for, as indicated above, a number of fundamental rights are indeed involved here. Secondly, it views incorrectly the facts in Sherbert. Appellants imply that the unemployment insurance benefits in Sherbert were really not benefits at all since they were drawn from a fund to which the appellant (employee) in that case had contributed. On the contrary, South Carolina statutes provide that contributions to the unemployment insurance fund are made by the employer who is prohibited from deducting funds for this purpose from the employee's wages. See South Carolina Code, §§ 68-171; 68-201; 68-351; Lumber Mut. Cas. Ins. Co. v. Stukes, 164 F.2d 571 (C.A. 4 1947). Thirdly, it views the law erroneously since Sherbert very definitely settled the question that a statute may not "be saved from constitutional infirmity on the ground that unemployment compensation benefits are not appellants' 'right' but merely a 'privilege.'" 374 U.S. at 404. See Section I.D.2.c., infra.

recently considered the constitutionality of such requirements.[50/] In addition to the decisions in Thompson v. Shapiro, 270 F.Supp. 331 (D. Conn. 1967) and Smith v. Reynolds, 277 F.Supp. 65 (E.D.Pa. 1967) which are now before the Court (Nos. 813 and 1138, Oct. Term, 1967), three-judge district courts have declared such laws unconstitutional in Delaware (Greene v. Department of Public Welfare, 270 F.Supp. 173 (D.Del. 1967)) and Illinois (Johnson v. Robinson, ___F.Supp.___(N.D.Ill. 1968)).[51/] In addition, preliminary injunctions enjoining statewide enforcement of durational residence laws have been granted in Wisconsin (Ramos v. Health & Social Serv. Bd., 276 F.Supp.

50/ In their Brief at p.4, appellants note that "[u]ntil recently, the constitutionality of such provisions was seldom challenged, and such challenges as were made were uniformly rejected." The one case to which appellants refer, People ex rel. Heydenreich v. Lyons, 374 Ill. 577, 30 N.E. 2d 46 (1940), was indeed the only opinion of a court considering the constitutionality of welfare residence laws until the district court ruled in Thompson v. Shapiro, supra. This fact is not surprising in light of the general unavailability, until very recently, of lawyers to represent poor persons in civil litigation. See Williams v. Shaffer, supra, at 1041; Snell v. Wyman, supra, at n. 14. Although the Lyons case did sustain a durational residence requirement, appellees suggest that its two major foundations--1) that since assistance is not a constitutional right, the state has a large degree of discretion when it elects to furnish it and 2) that the law represented a legitimate attempt to prevent Illinois from becoming a haven for the transient poor--have been complelely eroded by more recent decisions of this Court. See section I.D., infra.

51/ See also Smith v. King, 277 F.Supp. 31 (M.D.Ala. 1967), now before this Court (No. 949, Oct. term, 1967), where the court ruled that an Alabama welfare regulation which declared ineligible for AFDC those children whose mothers were engaging in non-marital sexual relations was an arbitrary classification violative of equal protection. And see the decision just rendered in Anderson v. Schaefer, ___F.Supp.___(N.D.Ga. 1968) in which a three-judge district court ruled unconstitutional under the equal protection clause that portion of a Georgia welfare regulation which provided that persons who obtain full-time employment are not eligible to have their wages supplemented by AFDC payments regardless of the amount of the wages whereas persons having part-time or irregular employment may have their wages supplemented by AFDC payments.

474 (E.D. Wisc. 1967)),[52] Connecticut (Alvarado v. Dunn, Civil No. 12,399 (D.Conn. 1968)),[53] and Maryland (Mantell v. Dandridge, Civil Action No. 18792 (D.Md. 1967)).[54]

52/ Although the court has not entered a final order, in connection with the granting of the preliminary injunction, it wrote an opinion which stated that since the main issue was one of law, the decision on the preliminary injunction tended to be one on the merits and that a trial would only be held if any party believed that there were issues of fact to be considered or further argument required.

53/ The district court's judgment in Thompson v. Shapiro, supra, applied only to the named plaintiff. See Appendix to Appellant's Brief in Shapiro v. Thompson, No. 813, Oct. Term, 1967, at 37a. The order in Alvarado, although entitled "Temporary Restraining Order", is to remain in effect "during the pendency of this action or until further order of the court." id. at 2.

54/ In addition, preliminary relief for the named plaintiff has been entered in cases challenging welfare residence laws in Arizona (Porter v. Graham, supra. See fn. 4, supra), Wisconsin (Denny v. Health & Social Serv. Bd., Civil Action No. 67-C-426 (E.D. Wisc. 1967)) (a challenge to a general assistance residence law not involved in the Ramos suit), South Carolina (Charles v. Rivers, CA/67-849 (D.S.C. 1968)) (entered with the consent of attorneys for defendants), and Texas (Alvarez v. Hackney, Civil Action No. 68-18-SA (W.D. Texas 1968)). In Florida and Massachusetts, requests for preliminary relief in actions challenging durational residence laws have been denied, the Massachusetts court basing its ruling on the fact that no showing of irreparable damage was made by the plaintiffs who were receiving general public assistance for which there is no residence requirement. Lamont v. Roberts, No. 67-1056-Civ-CA (S.D. Fla. 1968); Hatcher v. Ott, Civil Action No. 68-212-G (D.Mass. 1968). (The Florida court did not explain the basis for its order.) The only decision on the merits upholding the constitutionality of a durational residence law is Waggoner v. Rosenn, ___F.Supp.___, (M.D.Pa. 1968). In that case, involving a challenge to the same law that is before this Court in Reynolds v. Smith, No. 1138, Oct. Term 1967, the Court, after the entry of a permanent injunction in Reynolds, dismissed the complaint. The opinion in Waggoner was written by the dissenting judge in Reynolds.

D. The Statutory Purposes Which Allegedly Justify the Classification.

As appellees pointed out in section I.A., supra, a statutory classification, to be sustained, must be "reasonable in light of [the statute's] purpose . . . ." McLaughlin v. Florida, supra. Before examining the supposed purposes of the durational residence requirement, which, according to appellants, justify the classification which so many courts have recently condemned, it is essential first to examine the general question of the technique used to search for a purpose 55/

55/ It is important to keep in mind not only the supposed purposes of the durational residence provision but the more fundamental purpose of the overall statute, of which the durational residence section is only a small part. For if the supposed purpose of the provision in question here runs headlong into the primary purpose of the entire statute, this fact itself is good reason to examine the secondary purpose with great care and to determine whether "[o]ther means to accomplish secondary purposes must be sought." (A. 69). As the court below noted, the "basic purpose [of the public assistance statute], simply stated, is to aid members of the community who are in need." (A. 69). The provision of the District of Columbia Public Assistance Act which establishes the five basic categorical assistance programs states that the Commissioners shall "provide for maximum cooperation with other agencies rendering services to maintain and strengthen family life and to help applicants for public assistance and recipients to attain self support or self care . . . ." D.C. Code, §3-202 (b)(1). The federal statute which authorizes contributions to local AFDC programs makes the same point. Thus 42 U.S.C. 601 provides:

> For the purpose of encouraging the care of dependent children in their own homes or in the homes of relatives by enabling each State to furnish financial assistance and rehabilitation and other services . . . to needy dependent children and the parents or relatives with whom they are living to help maintain and strengthen family life and to help such parents or relatives to attain or retain capability for the maximum self support and personal independence consistent with the maintenance of continuing parental care and protection . . . (emphasis added).

Furthermore, mothers were deemed expressly to be the best judges of their children's interests, for Congress provided in 42 U.S.C. 606(b) that assistance payments in the AFDC program be in the form of money payments, as distinguished from voucher or vendor (fn. 55 continued on p. 42.)

with which to justify a statutory classification. Although it has often been stated that a justifying purpose may be found in any state of facts which reasonably can be conceived, see Munn v. Illinois, supra,[56/] the Court has placed limits on the way in which the search for the purpose may be conducted. Thus, where statutes explicitly declare their purpose, there is "no room to conceive of any other purpose for their existence." Allied Stores v. Bowers, 358 U.S. 522, 530 (1959). Likewise, where the purposes of a law, not obvious on its face, are stated by its framers or the state's representatives who are

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fn 55 continued:
payments. The Department of Health, Education, and Welfare has interpreted the money payment provision of the Social Security Act as follows:

> The right carries with it the individual's freedom to manage his affairs; to decide what use of his assistance check will best serve his interests; and to make his purchases through the normal channels of exchange, enjoying the same rights and discharging the same responsibilities as do friends, neighbors, and other members of the community. . . . A recipient of assistance does not, because he is in need, lose his capacity to select how, when, and whether each of his needs is to be met. Handbook of Public Assistance Administration, Pt. IV, §5120.

See also Pt. IV, §§3401, 4223.1, for a more detailed elaboration on the basic purpose of the AFDC program.

Thus, viewed in the context of the primary objectives Congress articulated in establishing the categorical assistance programs, it becomes obvious that the durational residence requirement results in restraining the mother's full exercise of her judgment concerning the proper environment for her children and further that its necessary effect could be institutionalization of children who had accompanied their parents to a new place of residence.

56/ As pointed out in fn. 29, supra, this test was developed in the context of cases challenging the power of the government to tax or regulate economic arrangments of businesses. A very different proposition is before the Court here.

defending it, again there is no room left to conceive of any other purpose it may serve. Martin v. Walton, 368 U.S. 25, 28 (1961) (Douglas, J., dissenting); Rinaldi v. Yeager, 384 U.S. 305, 310 (1966); McLaughlin v. Florida, supra, at 193; Griswold v. Connecticut, supra, at 505 (White, J., concurring). See also Kennedy v. Mendoza-Martinez, 372 U.S. 144, 169-70 (1963).[57/] Since the durational residence law does not on its face state the rationale for the classification, it is necessary to turn to justifications suggested by the framers of the law and by its defenders.

1. Purposes Suggested by the Legislative History

A durational residence requirement in connection with a dependent children program first appeared in 1926 when the Congress enacted a statute to provide assistance to mothers of

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57/ In Flemming v. Nestor, 363 U.S. 603, (1960) the Court upheld the constitutionality of a provision of the Social Security Act which provided that OASDI benefits should be terminated in cases of aliens who were deported under Section 241(a) of the Immigration and Nationality Act (8 U.S.C. 1251(a) on any of the grounds specified in the Social Security Act provision. See 42 U.S.C. 402 (n). The rational justification for the statute which the Court found was that the nation's economy would be benefitted by the increased overall purchasing power resulting from taxing productive elements of the economy to provide payment to the retired and disabled who, because of their limited resources, would spend a comparatively large percentage of their payment. This advantage, the Court concluded, would be lost as to payments made to persons residing abroad. An examination of the Government's brief in this Court indicates that no such purpose was suggested and it does not appear on the face of the statute. See Brief for the Appellant in Flemming v. Nestor, No. 54, Oct. Term, 1959 at 70-76, 80-81. Thus, Flemming appears to take an approach contrary to the cases cited in the text. Appellees suggest that at least in a case in which fundamental rights are in contest and in which the government specifies the purposes of the statute in question, it is appropriate for the Court to avoid postulating rationales offered neither by the statute, its legislative history, nor its defenders, especially since appellees would have no opportunity to demonstrate that the suggested purpose has no relevance or rests on a supposed state of facts which does not exist.

needy children. See 44 Stat. 758, D.C. Code, §8-91 (1929 Ed.).[58] Neither the 1926 law nor its revised form enacted in 1944, see 58 Stat. 277, D.C. Code, §32-753 (1940 Ed., Supp. VII), contain any legislative history suggesting a purpose of an AFDC durational residence law. The durational residence provision of D.C. Code. §3-203 was enacted by Congress in 1962 as part of a general consolidation in one title of all statutory provisions on public assistance. Since durational residence provisions were not new to the D.C. Code, it is not surprising that no purpose was mentioned by its authors except to make the residence requirement in all public assistance programs uniform in length. See S. Rep. No. 844, 87th Cong., 1st Sess. (1961), quoted at A. 59.

But residence provisions long antedate the categorical assistance programs established pursuant to the Social Security Act. They have their roots in the settlement system of the Elizabethan poor laws which sought to remove paupers to the jurisdictions which had the responsibility for supporting them.[59] It is safe to assume that this historic purpose is at the heart

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58/ The 1926 program preceded by nine years the federal AFDC plan enacted as part of the Social Security Act of 1935.

59/ The development of settlement laws is documented in Mandelker, The Settlement Requirement in General Assistance I, 1955 Wash.U.L.Q. 355;Mandelker, The Settlement Requirement in General Assistance II, 1956 Wash. U.L.Q.21; Mandelker, Exclusion and Removal Legislation, 1956 Wis. L.Rev. 57. When the settlement system was incorporated into the laws of the American colonies, the purpose it served became twofold. Since there was no uniform law for poor relief in America as there had been in England, the settlement laws not only shifted the responsibility for caring for poor persons, but also prevented paupers from entering communities which were hostile to them. See Falk, Settlement Laws--A Major Problem in Social Welfare (American Association of Social Workers, New York, 1948).

of the District's provision as well.[60/]

2. Purposes Suggested by Appellants.

a. Preventing Migration of Paupers to the District of Columbia.

In the court below, appellants offered as a rational justification for the durational residence law, the need to protect the funds appropriated for welfare assistance from being drained by persons migrating to the District of Columbia for the purpose of obtaining higher welfare payments.[61/] In more abbreviated fashion, appellants make the same justification agrument here. See Brief for Appellant at 9.[62/] This suggested purpose fits well with the historical facts.[63/] But for several reasons, it may not be invoked to save the statute.

First, as the court below emphasized (A. 66), this purpose merely restates the premise of the Elizabethan Poor Laws which enshrine the notion of settlement. But, as this Court has pointed out:

> the theory of the Elizabethan Poor Laws no longer fits the facts. Recent years, and particularly the

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60/ Although there is an absence of legislative history stating the purpose of the District's durational residence law, the traditional purpose of such laws was alluded to in the Congressional debates over the provisions of the Social Security Act imposing maximum periods of residence which the states could require as conditions for applying for public assistance and still remain eligible for federal matching payments in the categorical assistance programs. See Hearings before the Committee on Ways and Means, House of Representatives, 74th Cong. 1st Sess. on H.R. 4120, at 830; 79 Cong. Rec. 6062 (1935).

61/ See Memorandum of Points and Authorities in Opposition to Plaintiffs' Motion for Preliminary Injunction and in Support of Defendants' Motion to Dismiss, or in the Alternative, for Summary Judgment, which is part of the original record in this Court, at 14-16.

62/ The dissenting opinion below stated that the "manifest purpose of the legislation is to prevent a particular State or District from becoming a Mecca for migrants from other states where relief payments are smaller." (A. 82).

63/ See the Mandelker articles cited in fn. 59 , supra.

> past decade, have been marked by a growing recognition that in an industrial society the task of providing assistance to the needy has ceased to be local in character. Edwards v. California, supra, at 174-75.

In Edwards, California, too, was concerned about the huge influx of migrants into its territory. Nevertheless, the Court struck down a law expressly designed to curb the migration of paupers. In doing so, the Court noted:

> It is frequently the case that a State might gain a momentary respite from the pressures of events by the simple expedient of shutting its gates to the outside world. But, in the words of Mr. Justice Cardozo: "The Constitution was framed under the dominion of a political philosphy less parochial in range. It was framed upon the theory that the peoples of the several States must sink or swim together, and that in the long run prosperity and salvation are in union and not division." Baldwin v. Seelig, 294 U.S. 511, 523. 314 U.S. at 173-74.

Clearly then, Edwards establishes that the object of deterring indigents from migrating to the District of Columbia is an unlawful governmental objective and hence may not be invoked to justify the statute. Bolling v. Sharpe, supra, at 499-500; Griffin v. County School Bd., 377 U.S. 218, 231 (1964); Truax v. Raich, supra, at 421. Compare Toomer v. Witsell, 334 U.S. 385 (1948).

Secondly, the interests of appellants in protecting the drain of welfare funds through the use of a durational residence test seems less than persuasive in light of three District of Columbia practices. Pursuant to the Department of Public Welfare Handbook of Public Assistance Policies and Procedures, HPA II, AP 4.5, I, assistance is granted to persons formerly residing in the District who have severed all ties with the jurisdiction and moved elsewhere. These payments are made until the individuals have satisfied any durational residence

requirements imposed by the state to which they have migrated. Furthermore, in the case of appellee Barley, the cost to the District of maintaining her at St. Elizabeth's Hospital was in excess of $370 per month, compared with approximately $110 per month that she would have received in public assistance funds if she had been declared eligible and placed in a foster home.[64/] Finally, although D. C. Code,§3-203(b) precluded the granting of public assistance to one of appellee Brown's children until his first birthday since, at the time of his birth, his mother had not lived in the District one year, (See, fn. 14 , supra), appellants will nevertheless care for this child at an institution without regard to his mother's length of residence.[65/] D. C. Code, §3-126(3). The cost to the District for institutional care far exceeds the cost in giving the parent public assistance for the child.[66/]

64/ See Letter to Mr. Joseph Dugan, from E. J. Brown, dated July 6, 1967, and Opinion of Charles Duncan, Corporation Counsel, dated Jan. 18, 1967. These documents are attached to the complaint in the Barley case as Exhibits G and H and are part of the original record in this Court.

65/ Likewise, until such time as the children of appellees Harrell and Legrant satisified the one year durational residence requirement, the District would have institutionalized them if necessary. See fn. 39 , supra, and accompanying text.

66/ A Report to the Subcommittee on the District of Columbia, Committee on Appropriations, U.S. Senate, entitled "Review of Policies and Procedures Concerning Admissions to and Discharges From Junior Village," prepared by the Comptroller General of the United States, dated February 12, 1964 (printed in Hearings before the Subcommittee on the District of Columbia, Committee on Appropriations, U. S. Senate, on HR 10199, D. C. Appropriations Act for 1965, 88th Cong., 2d Sess., Vol. II, 1401 et seq.) stated that in 1964 the total cost of operating Junior Village was $2,777,000. The monthly average cost per child for 1964 was $250.80 (1403). This cost has not appreciably declined during the last four years. By contrast, the cost in AFDC payments to maintain a child with his parent, taking into account his pro rata share of the shelter allowance available for the whole family, would be no more than $50 per month. See District of Columbia Handbook of Public Assistance Policies and Procedures, HPA II, RQ 2.1.

Yet appellants seek to justify durational residence on budgetary grounds although denying aid for a year may make it "[t]oo late to prevent the separation of a family into foster homes or Junior Villages," (A. 64).[67/]

Thirdly, this supposed purpose depends on the validity of a state of facts which has been totally unproved by appellants.[68/] Thus, appellants have assumed that absence of a durational residence law would lead to an assault on the District's treasury by persons flooding the jurisdiction in order to obtain welfare funds. Not a shred of evidence to support this notion was introduced in the court below or has been suggested in appellants' brief here.

As the Court noted in United States v. Carolene Prod's. Co., supra:

> Where the existence of a rational basis for the legislation whose constitutionality is attacked depends upon facts beyond the sphere of judicial notice, such facts may properly be made the subject of judicial inquiry, . . . and the constitutionality of a statute predicated upon the existence of a particular state of facts may be challenged by showing to the court that those facts have ceased to exist. 304 U.S. at 153.

67/ In the case of appellee Harrell, appellants refused to grant her public assistance and yet "told me I could give my children to Junior Village where the District of Columbia government would pay for their keep." See appellee Harrell's Affidavit in Support of Motion for Preliminary Injunction at 4.

68/ The court below noted this fact in stating: "Another difficulty in accepting the protective assumption as giving constitutional support to the challenged provision, is the speculative character of the assumption from a factual standpoint." (A. 67).

Surely the supposed state of facts offered by appellants may not be made the subject of judicial notice. Thus, it is appropriate for a court to inquire into the validity of the asserted hypothetical facts and determine whether there is "evidence to dispel them." McGowan v. Maryland, 366 U.S. 420, 427 (1961).[69/]

As the court below found (A. 67), the available evidence points in precisely the opposite direction of appellants' supposed facts.[70/] Hence, they may not be relied on as support

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69/ See also Busey v. District of Columbia, 138 F.2d 592 (C.A.D.C. 1943), where the court noted that when legislation appears on its face to effect fundamental freedoms and the law's validity

> depends upon the existence of facts which are not proved, their existence should not be presumed; at least when their existence is hardly more probable than improbable, and particularly when proof concerning them is more readily available to the government than to the citizen. The burden of proof in such a case should be upon those who deny that these freedoms are invaded. 138 F.2d at 595.

70/ Available studies concerning the reasons for movement by lower socio-economic strata, including one by the District of Columbia Department of Public Welfare, indicate that people do not move for purposes of obtaining higher public assistance payments. Rather they move for a complex of reasons, the most common relating to promises of employment and the presence of relatives in the state of in-migration. See Tilly, "Race and Migration to the American City" in The Metropolitan Enigma, (James Wilson, Ed.)(Chamber of Commerce 1967) 129-30. (This study was attached as Appendix I to Memorandum in Support of Plaintiffs' Counter-Motion for Summary Judgment and Supplemental Memorandum in Support of Plaintiffs' Motion for Preliminary Injunction and Prayer for Permanent Injunctive Relief, and is part of the original record in this Court.) For a detailed listing of twenty-four "migration stimulating situations" see Bogue, D., "Internal Migration," in The Study of Population, (P. Hauser and O. D. Duncan, Ed.)(University of Chicago, 1959), 251; Bogue, D., Population of the United States (Glencoe, Illinois, Free Press, 1959), 416-418. For general observations tracing patterns of movement from the rural South by Negroes see Hauser, P., "Demographic Factors in the Integration of the Negro," Federal Role in Urban Affairs, Hearings before the Subcommittee on Executive Reorganization of the Committee on

(fn. 70 continued on p.50.)

for the proposition that the durational residence law is a valid classification because it prevents migration for purposes

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fn. 70 continued:
Government Operations, U.S. Senate, 89th Cong., 2d Sess., Pt. 14, 3000 (1966).

For similar conclusions concerning the reasons for interstate migration, see U.S. Department of Commerce, Area Redevelopment Administration, The Geographic Mobility of Labor: A Summary Report (September, 1964); U.S. Department of Commerce, Area Redevelopment Administration, The Propensity to Move (July, 1964); U.S. Department of Commerce, Area Redevelopment Administration, Migration Into and Out of Depressed Areas (September, 1964). The Geographic Mobility of Labor study was based on a scientifically selected sampling involving over 3000 interviews. This study revealed that 18% of all most recent moves were for the purpose of obtaining steadier work or moving because of unemployment, 17% were to obtain a better or higher paying job, 16% were due to transfers and reassignments, 12% were due to starting or leaving school or military service, and 22% were for family reasons. Of this last category,

> [m]ost of the moves were made to be closer to relatives, either out of a general desire to be near relatives, or because of health considerations, or a death in family . . . . The total number of moves increases with education, as previously shown, but the proportion of moves which are at least in part for family reasons falls from 39% for the poorly educated to 11% for the college graduates. Id. at 19-20.

Studies in individual states reach the same conclusions. In a study entitled The Movement of Population and Public Welfare in New York State, New York State Department of Social Welfare (1958), analyzing the state case load in 1957 with respect to recent arrivals in the state within the last year, it was concluded that (at 2) ;

> states with high residence requirements for public assistance and care get, not less, but more in-migration than New York State. Among the states showing the largest net civilian inmigration are California, Florida, Michigan, Ohio, Arizona, and Maryland, all of which have very high residence requirements. New York State, without residence requirements, shows only a small gain.

The study also concluded that, from facts available to the New York State Department of Social Welfare,

> public welfare residence laws neither attract nor deter people from moving to a specific State. Studies show that they move for employment, for better economic opportunities, for better educational opportunities for their children, for better living conditions, for a better climate, and to join relatives and friends. Id. .

(fn.70 continued on p.51)

of obtaining public assistance.[71/]

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fn. 70 continued:
This conclusion was confirmed in Kasius, "What Happens in a State Without Residence Requirements", in Residence Laws: Road Blocks to Human Welfare (1956) at 19-20; State of New York, Moreland Commission on Welfare, Public Welfare in the State of New York (1963) at 27-28; Falk, Social Action on Settlement Laws, 18 Soc. Serv. Rev. 288 (1944); Hyde, The Trouble with Residence Laws, 16 Public Welfare, 103, 105 (1958). See also 1967 Report of the Committee on Labor and Public Welfare, U.S. Senate, 90th Cong., 1st Sess.: The Migratory Farm Labor Problem in the United States, at 42-43. The Rhode Island experience is the same. See Leet, G., Rhode Island Abolishes Settlement, 18 Soc. Serv. Rev. 281 (1944), where the author states that "to date, the Division of Public Assistance [in Rhode Island] has been unable to locate a single individual who has moved into the state in order to secure assistance." Id. at 283. The Greenleigh Report on ADC in Cook County, Illinois (Facts, Fallacies, and Future (Greenleigh Associates, 1960)) concluded that the 24,000 families receiving Cook County ADC were not newcomers: 90% had lived in the state for five years or more; 25% of the mothers and 75% of the children were born in Illinois. AFDC mothers from outside had come to take a job (18%), to be with their husbands (22%), or to join relatives (38%), not to obtain public assistance. Furthermore, only 100 of the 2400 migrant families had received public assistance in the state of origin during the five year period before they came.

Finally, it is most extrordinary that appellants have raised the spectre of an influx of indigents migrating into the District of Columbia, since an official study of the District of Columbia Department of Public Welfare, "Children in Need in the District of Columbia" (October, 1954), reprinted in Problems of Hungry Children in the District of Columbia, Hearings before the Subcommittee on Public Health, Education, Welfare, and Safety of the Committee on the District of Columbia, U.S Senate, 85th Cong., 1st Sess. (1957) 515 concluded that "figures relating to place of birth and migration of mothers and children support the belief that few if any families either white or Negro, move into the District for the purpose of obtaining public assistance." Id at 523. Of AFDC mothers on the rolls during January, 1952 only 2% had resided in the District for less than three years at the time of the study and all but 106, or 6.6%, had resided in the District for at least five years. Id. at 521 . Further, it was concluded that

> [g]oing back to the first time each mother received either ADC or home care the record indicates that, of the 1822 mothers, 47 or 2.6% received assistance their second year in the District; 70 others or 3.8% in their third year; 77 or 4.2% in their fourth, and 82 or 4.5% in their fifth year. The total who received assistance in their first five years of District residence was 358, or 19.6%. Id. at 521.

71/ As the court below noted (A. 68), the facts of this case lend no support to the argument that persons migrate in order to obtain public assistance. If appellants are really concerned with the problem of transients entering the District for the purpose of claiming assistance, they should adopt means appropriate to this end. See infra.

b. An Objective Test of Residence

As a second justification for the durational residence law, appellants suggest that in light of the "well-known problems" of determining whether a person is a resident, it is within the legislative discretion to enact an objective test that a person who has resided in the District for one year is a resident for the purposes of public assistance. (Brief for Appellant at 10.) The difficulty with this argument is that it places administrative convenience ahead of constitutional rights. Where, as here, fundamental rights are in the balance, a legitimate goal of determining whether a person is in fact a resident[72/] must be achieved by means "narrowly drawn to prevent the supposed evil . . . ." Cantwell v. Connecticut, 310 U.S. 296, 307 (1940). For, as the Court stated in Aptheker v. Secretary of State, supra, "precision must be the touchstone of legislation so affecting basic freedoms . . . ." 378 U.S. at 514. Accord NAACP v. Button, 371 U.S. 415, 433 (1963); Louisiana ex rel. Gremillion v. NAACP, 366 U.S. 293, 296 (1961); Shelton v. Tucker, 364 U.S. 479, 488 (1960); NAACP v. Alabama, supra, 377 U.S. at 307; Dombrowski v. Pfister, supra, at 486; Keyishian v. Board of Regents, 385 U.S. 589, 603-04 (1967).

The durational residence statute, however, sweeps before it all persons who have been in the District for less than a year without any effort to sort out those persons who are clearly residents. As the court in Green v. Department of Public Welfare, supra, stated:

> we think that the one year period is a constitutionally unreasonable test for determining the "intention" aspect

72/ Appellees do not contend and the court below did not rule that persons who are not bona fide residents of the District of Columbia must be paid public assistance (A. 70).

> of domicile, assuming such was its purpose. More accurate alternatives are available to ascertain an individual's true intentions without exacting the protracted waiting period with its dire economic and social consequences to certain individuals living in the state. 270 F.Supp. at 177-78.[73]

Although the durational residence law might well be an administrative convenience, the Court has ruled in an analogous situation that such an excuse will not save the statute. In Harman v. Forssenius, supra, the Court declared unconstitutional under the Twenty-Fourth Amendment a Virginia law which provided that in order to qualify to vote in a federal election, one must either pay a poll tax or file a witnessed or notarized certificate of residence. The state sought to justify the law on the ground that its certificate was a necessary method of proving residence of those persons who, by virtue of the Twenty-Fourth Amendment, could vote in a federal election in Virginia without paying the poll tax. But the Court ruled that this "remote administrative benefit," namely demonstrating residence, did not justify the constitutional deprivation involved. 380 U.S. at 542. See also Carrington v. Rash, supra, at 96; Oyama v. California, 332 U.S. 633, 646-47 (1948); Rinaldi v. Yeager, supra, at 310.

c. Public Assistance is a Gratuity

Finally, appellants suggest as a general justification for the statutory scheme the fact that since public assistance payments are mere non-contractual benefits, they must

> be viewed in light of the Court's pronouncement in United States v. Cook, 257 U.S. 523 (1922), that:
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> > ". . . Congress in shaping the form of its bounty may impose conditions and limitations

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73/ As noted in fn. 41 , supra, appellees satisfy legal requirements of residence for all other purposes.

> on its acquisition and enjoyment by the beneficiaries which it could not impose on the use and enjoyment by them of a vested right."

257 U.S. at 527; (emphasis added) (Brief for Appellants at 6-7). 74/

Whatever may have been the law at one time with respect to the right of government to justify infringement of constitutional rights on the ground that the infringement relates to a benefit which the government does not have to give in the first place, this view has long since been rejected. Sherbert v. Verner, supra, at 404; Keyishian v. Board of Regents, supra, at 605-06; Schware v. Board of Bar Examiners, 353 U.S. 232, 239 (1957); Garrity v. New Jersey, 385 U.S. 493 (1967); Spevack v. Klein, 385 U.S. 511 (1967); Simmons v. United States, 88 Sup. Ct. 967 (1967). 75/

74/ This justification, rather than being suggestive of a purpose of the durational residence test, is rather one which argues that no purpose at all need be offered to justify a statutory classification relating to a benefit as opposed to a right.

75/ In the one case that has squarely considered the unconstitutional condition doctrine in the context of public assistance, the court rejected the notion that "the power of government to decline to extend to its citizens the enjoyment of a particular set of benefits . . . embrace[s] the supposedly 'lesser' power to condition the receipt of those benefits upon any and all terms." Parrish v. Civil Serv. Comm. 425 P.2d 223, 230 (Sup. Ct. Cal.,(1967). See also Collins v. State Bd., 248 Iowa 369, 81 N.W. 2d 4 (1957).

Any suggestion to the contrary in Flemming v. Nestor, supra,[76/] see (A.81) has been superseded by more recent decisions of the Court.[77/]

76/ Appellants, both in the court below and here, have placed great reliance on Flemming v. Nestor, supra. Whether or not the standard set forth by the Court in Flemming for judging the constitutionality of conditions attached to a statutory grant has been superseded by more recent cases, Flemming is clearly distinguishable. First, that case involved a discrimination between residents and non-residents, not one between two groups of residents, a classification which the Court has traditionally examined with close scrutiny. See e.g., Truax v. Raich, supra; Oyama v. California, supra. Secondly, Flemming involved a deported alien, not a citizen. The power of Congress to prescribe the means and circumstances under which aliens may be deported has traditionally been construed extremely broadly. See Galvin v. Press, 347 U.S. 522 (1954) and the cases cited therein. In its brief in Flemming, the Government placed great reliance on the fact that the statutory classification involved non-resident aliens. See Brief for Appellant in Flemming v. Nestor, No. 54, Oct. term, 1959, at 45-53, 71-73. Thirdly, the rational justification offered in support of the statute's constitutionality simply has no application here. The Court in Flemming was concerned about a loss to the American economy because funds were spent in another country. Obviously, welfare payments made to appellees and the class they represent will be spent not only in this country but in all likelihood in the District of Columbia since persons poor enough to qualify for this aid are unable to save any substantial portion of it to spend at a later date in another jurisdiction.

77/ Appellants, in the court below, cited 42 U.S.C. 602(b) as lending support to the argument that a durational residence test is a reasonable condition. That section provides that the Secretary of Health, Education, and Welfare shall not approve any state plan which imposes as a condition of eligibility for AFDC a durational residence requirement of more than one year. See also 42 U.S.C. §§1202(b), 1352(b) and 1382(b) which impose limitations on durational residence requirements for AB, APTD, and OAA. But, as the language of these provisions makes apparent, they express no ringing approval of durational residence tests. Their legislative history suggests that Congress, while desiring not to encroach unreasonably on the right of the states to set eligibility requirements for public assistance, nevertheless thought existing durational residence laws were excessive. The result of these two conflicting concepts was a compromise which permitted federal funds to be contributed to states with residence requirements but placed restrictions on the required length of residence. See S. Rep. 628, 74th Cong., 1st Sess. 4, 35 (1935); Hearings before the Committee on Finance, U.S. Senate, on S. 1130, 74th Cong., 1st Sess. 192, 633; H. Rep.
(fn. 77 continued on p. 56.)

In summary, the various purposes for the classification revealed by the statute, its history, and the suggestions of appellants are either unlawful purposes per se, ones that must be accomplished by narrower means, or are factually untrue. Hence none of them may be invoked to save the classification on the ground that it is reasonably related to the accomplishment of these purposes. Since there are no purposes remaining to justify the classification, it must fall as an arbitrary one prohibited by the equal protection guarantees of the Fifth Amendment.[78/]

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fn. 77 continued:

615, 74th Cong. 1st Sess. 23 (1935); Hearings before the Committee on Ways and Means, House of Representatives, 74th Cong. 1st Sess., on H.R. 4120, 330; 79 Cong. Rec. 5602 (1935). In light of the express language and history of these Social Security Act provisions, the statement of the dissenting opinion below that the District law "was expressly authorized by the Social Security Act" (A.73) is hardly an accurate description. Therefore, the dissenting opinion's conclusion that a ruling that the District's provision is unconstitutional "strike[s] down in its wake...the Social Security Act authoriz[ation]" (A.73) does not follow. Should the Court affirm, these Social Security Act provisions, while remaining on the books, will simply no longer be needed since the problem they sought to minimize will have been eliminated.

78/ Two other conceivable purposes for the classification, neither of them suggested by counsel for appellants, the statute, or its legislative history, are that 1) the statute tends to assure eligibility for benefits and thereby avoids payments tainted with fraud and 2) the statute, by not giving benefits until the second year of residence, enables the legislature to better predict the amount of funds needed for the following year's welfare budget. The first argument, which was rejected by the court in Greene v. Dept. of Public Welfare, supra, at 177, was possibly a concern of the dissenting opinion in the court below. See A.74. An identical argument was suggested to the court in Sherbert v. Verner, supra. In rejecting it, the court noted a) that the argument had not been made in the court below and "we are unwilling to assess the importance of an asserted state interest without the views of the state court." 374 U.S. at 407; b) even if the contention had been made below, the record would not have sustained it; and c) it is doubtful whether such
(fn. 78 continued on p.57 .)

fn. 78 continued:
evidence, even if it existed, would be sufficient to warrant substantial infringement of the constitutional rights involved for:

> [e]ven if the possibility of spurious claims did threaten to dilute the funds and disrupt the scheduling of work, it would plainly be incumbent upon the appellees to demonstrate that no alternative forms of regulation would combat such abuses without infringing First Amendment rights. 374 U.S. at 407.

All three of these reasons apply here.

The second argument was offered by the dissenting judge in the lower court in Reynolds v. Smith, supra, as the " 'state of facts [which] reasonably may be conceived to justify' the challenged statutory discrimination...." 277 F.Supp. at 71. As the appellees' brief in this Court in Reynolds makes clear (see section II. C. of the Brief for Appellee in No. 1138, Oct. term, 1967), this suggested purpose was, inter alia, factually disproved in the trial court. In any event, it has never been suggested by appellants here.

II. The Durational Residence Requirements of D.C. Code, §3-203 are Distinguishable From Durational Residence Requirements in Other Areas of the Law.

Appellants argue that an affirmance of the decision below will undermine the validity of durational residence requirements in all other areas of the law. See Brief for Appellants at 9-10.[79/] An examination of the nature and purpose of these other types of durational residence requirements demonstrates, however, that no such result follows since those provisions are fundamentally different from the provisions involved here.

A. Other Types of Durational Residence Requirements

Although varying substantially from state to state, most durational residence laws not relating to public assistance appear to fall into four general categories - voting, public office, divorce and licensing. Courts which have considered the legality of such requirements in each of these areas have reached varying results, generally upholding them but occasionally declaring them invalid, especially in the licensing area. In reaching their results, the courts have recognized that all durational residence requirements are not similar and each type requires a different analysis.

States typically impose durational residence requirements for voting in both local and federal elections.[80/] This Court recently reaffirmed the validity of such requirements in a per curiam opinion in Drueding v. Devlin, 380 U.S. 125 (1965). See

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79/ See also the dissenting opinion of Judge Clarie in Thompson v. Shapiro, supra, at 340, and the dissenting opinion of Judge Holtzoff in the instant case at A. 83.

80/ Pursuant to the authority of the Twenty-Third Amendment, the Congress has imposed a one year durational requirement upon residents of the District of Columbia who wish to vote for presidential and vice-presidential electors. D.C. Code, §1-1102.

also Pope v. Williams, 193 U.S. 621 (1904). They have been justified on the ground that the state has a legitimate interest in protecting the voting process from new residents who have no familiarity with the issues or the candidates, but who nonetheless may decisively affect the outcome of an election. Wright v. Blue Mountain Hosp. Dist., 214 Ore. 141, 328 P.2d 314 (1958); Estopinal v. Michel, 121 La. 879, 46 So. 907 (1908); Shaeffer v. Gilbert, 73 Md. 66, 20 Atl. 434 (1890). Another purpose of these laws is to provide a means of identifying voters and protecting against fraud. People ex rel. Agnew v. Graham, 267 Ill. 426, 108 N.E. 699 (1915); Howard v. Skinner, 87 Md. 556, 40 Atl. 379 (1898); Shaeffer v. Gilbert, supra. Durational residence requirements for voting may further be justified on the ground that Article I of the Constitution gives the states "broad powers to determine the conditions under which the right of suffrage may be exercised . . . absent of course, that discrimination which the Constitution condemns." Lassiter v. Northampton Election Bd., 360 U.S. 45, 50-51 (1959).

But even in the voting area, the power to impose durational residence provisions has its limits. Thus, in Carrington v. Rash, supra, the Court struck down a provision of the Texas Constitution which prohibited any member of the armed forces who moves his home to Texas during the course of his military duty from ever voting in any election in Texas so long as he is a member of the armed forces. The Court held that disenfranchisement of military persons, regardless of the length of their residence in the state, constituted an arbitrary discrimination against that group of residents. The lesson of Carrington is that even in an area where durational residence tests are normally upheld as

reasonably related to legitimate state interests, there are limits beyond which the requirement will be stricken as an arbitrary classification.[81/]

Closely related to the durational residence requirements for voting are those for holding elected or appointed public office.[82/] Such requirements are found in provisions of the first two Articles of the Constitution listing qualifications for Representatives, Senators and the President. There are few court decisions directly considering the validity of such state requirements. See People ex rel. Hoyne v. McCormick, 261 Ill. 413, 103 N.E. 1053 (1913); Sheehan v. Scott, 145 Cal. 684 79 Pac. 350 (1905); Evansville v. State, 118 Ind. 426, 21 N.E. 267 (1889). State ex rel. Holt v. Denny, 118 Ind. 449, 21 N.E. 274 (1889). The policy reasons for these requirements are similar to those in the voting area, namely that a person seeking or eligible for public office, even more than a voter, must have a close familiarity with the community and governmental unit within which he will exercise his power. Sheehan v. Scott, supra, 145 Cal. at 687, 79 Pac. at 351.

81/ The type of discriminatory classification condemned in Carrington is very analogous to the one here. The Texas law made no attempt "to determine the bona fides of an individual claiming to have actually made his home in the State long enough to vote. . . . All servicemen not residents of Texas before induction came within the provision's sweep." 380 U.S. at 95-96. It was this lack of precision which brought about the statute's downfall. Appellants' attempt to defend the District's durational residence test by making essentially the same argument -- that the provision is really an objective test of residence. But this argument contains the identical defect of the statute in Carrington, namely that it precludes any person residing here less than a year from demonstrating residence. See Section I.D. 2.b., supra.

82/ E.g. D.C. Code, §§11-2301 and 2-701 and §201(b) of the President's Reorganization Plan No. 3 of 1967.

Virtually all of the states have durational residence requirements for obtaining divorces.[83/] They have been upheld when attacked as violating provisions of the Fourteenth Amendment. Hensley v. Hensley, 286 Ky. 378, 151 S.W. 2d 69 (1941); Worthington v. District Court, 37 Nev. 212, 142 Pac. 230 (1914). The Courts have justified them on the grounds that they are necessary to insure that defendants receive adequate notice, Roberts v. Roberts, 144 Tex. 603, 192 S.W. 2d 774 (1946); to prevent nonresidents from using the state as a dumping ground for the marital troubles of other states, Holman v. Holman, 35 Tenn. App. 273, 244 S.W. 2d 618 (1951); and to protect the interest of society against hastily brought suits, Roberts v. Roberts, supra; Aucutt v. Aucutt, 122 Tex. 518, 62 S.W. 2d 77 (1933). Furthermore, social policy supports the imposition of durational residence requirements for obtaining divorces. Such a requirement may promote the stability of families in the jurisdiction. As the Court below noted (A. 64), a durational residence requirement for obtaining public assistance payments may lead to precisely the opposite result by encouraging breakdown of existing family units.

Finally, residence in a jurisdiction for a certain period may be a condition for obtaining a license to engage in a profession or operate a particular type of business.[84/] Such requirements have been invalidated by several courts under

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83/ See Am. Jur. 2d Desk Book Doc. No. 125 and Supp. In the District of Columbia, one of the parties to the marriage must have been a "bona fide resident" for the one year proceeding the commencement of the action. D.C. Code, §16-902.

84/ E.g. D.C. Code, §2-915. (Requirement of one year's residence or employment in the District of Columbia to obtain a certificate as a public accountant).

the privileges and immunities clause of Article 4, Section 2 and the due process and equal protection clauses of the Fourteenth Amendment. Mercer v. Hemmings, 194 So. 2d 579 (Fla. 1966), appeal dis. 389 U.S. 46 (1967); New Brunswick v. Zimmerman, 79 F. 2d 428 (C.A.3, 1935); Williams v. McCartan, 212 Fed. 345 (W.D.N.Y. 1914); State v. Pennoyer, 65 N.H. 113, 18 Atl. 878 (1889); In re Watson, 15 Fed. 511 (D. Vt. 1882); Wormsen v. Moss, 177 Misc. 19, 29 N.Y. Supp. 2d 798 (1941).[85/] But even in this area, there may be a basis for justifying durational residence requirements because of the strong interest of the state in upholding standards of professional persons and others who offer their services to the general public and who occupy special positions of trust and confidence. See La Tourette v. McMaster, 248 U.S. 465 (1919); State ex rel. Walker v. Green, 112 Ind. 462, 14 N.E. 352 (1887). Compare Dent. v. West Virginia, 129 U.S. 114 (1889); Graves v. Minnesota, 272 U.S. 425 (1926); Schware v. Bd. of Bar Examiners, supra; Martin v. Walton, supra.

B. The Uniqueness of Public Assistance Durational Residence Laws

The foregoing analysis reveals the striking contrast, in terms of purpose and effect, between durational residence laws

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85/ In the Wormsen case, involving a New York City ordinance requiring that applicants for a license to operate massage parlors must have been United States citizens for two years, the court ruled (per Bernstein, J.):

> . . . it is clearly unreasonable and arbitrary to apply a test of qualification for a private calling on the basis that one has been a citizen for two years and another for but a year and eleven months. Such a test is a discriminatory one in that, as Judge Cardozo said, it "create[s] a privileged caste among the members of the state." People v. Crane, supra, 214 N.Y. at page 167 . . . 29 N.Y. Supp. 2d at 803.

in welfare and those in other areas. First, durational tests in these other areas are tailored to accomplish substantial state objectives such as assuring a more informed electorate or guaranteeing the integrity of the professional services which are offered to the public. However, as previously discussed, durational tests in welfare are essentially designed to accomplish the unlawful state objective of discouraging indigents from entering the state.

Secondly, durational tests in welfare have far more disastrous consequences to those whom they affect. A new arrival in the jurisdiction may be substantially inconvenienced by a law denying him the right to vote or run for office during his first year of residence. But the interest of the state in protecting the ballot may substantially outweigh that inconvenience. For a person in need of public assistance, however, far more than inconvenience is involved. At stake is life itself or the threat of family disintegration. 86/ The urgent need, from both the individual and the government's point of view, to avoid such consequences far outweighs any lawful state interest in denying aid for a year.

Thirdly, to the extent these other durational residence requirements have been upheld by the courts, they have usually been justified on the ground that they promote the same result as that sought by the related statutory provisions, e.g. the requirements for public office holders are likely to result in more competent and committed governmental officials. As noted

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86/ In some instances, the impact of such a law may be to force a person to return to the jurisdiction which he had decided to leave. It is very unlikely that durational residence laws in other areas would have such an impact. See fn. 43, supra.

earlier, however, the effect of the welfare durational residence requirement is to flaunt the primary purpose of the statutory program of which it is a part.[87/] By preventing persons from receiving public assistance payments when they are in need, it promotes the very conditions which the overall assistance program is designed to alleviate.

Finally, welfare durational residence requirements are unique with respect to the extent of the national interest involved in the programs of which they are a part. Most of the requirements are found in those state public assistance programs which are substantially underwritten by federal program matching grants pursuant to the provisions of the Social Security Act. For example, in calendar 1966, of a total of $2,265,346,000 spent in AFDC programs in all the states, $1,299,940,000 or 57% came from the federal government. Social Security Amendments of 1967, Hearings before the Committee on Finance, U.S. Senate, 90th Cong., 1st Sess., on H.R. 12080, pt. 1, at 385. This large financial contribution is accompanied by detailed federal supervision over the various state programs. In such circumstances, the interest of an individual state in protecting welfare residence requirements is far less than it is with respect to residence requirements in areas of more traditional local concern. See Edwards v. California, supra at 174-75.[88/]

87/ See fn. 55 , supra.

88/ The court below recognized this fact when it noted that "[t]his national movement toward assistance where assistance is needed" permitted the court somewhat greater latitude in ruling that the statute in question violates the equal protection of the laws. (A. 71).

It is clear, then, that public assistance durational requirements are unique in many respects, particularly concerning their purposes and the severity of their impact; thus, decisions concerning their validity will have little, if any, relevance in determining the validity of other types of durational residence laws.

CONCLUSION

For the foregoing reasons, it is respectfully requested that the judgment of the court below be affirmed.

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April, 1968

Supreme Court of the United States

October Term, 1967

No. 813

BERNARD SHAPIRO, Welfare Commissioner of Connecticut,
Appellant,

v.

VIVIAN THOMPSON,
Appellee.

No. 1134

WALTER E. WASHINGTON, *et al.*,
Appellants,

v.

MINNIE HARRELL, *et al.*,
Appellees.

No. 1138

ROGER A. REYNOLDS, *et al.*,
Appellants,

v.

JUANITA SMITH, *et al.*,
Appellees.

On Appeal from the District Courts of Connecticut, District of Columbia and the Eastern District of Pennsylvania

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BRIEF OF AMERICAN JEWISH CONGRESS, COUNCIL OF JEWISH FEDERATIONS AND WELFARE FUNDS, INC., NATIONAL CONFERENCE OF CATHOLIC CHARITIES, NATIONAL COUNCIL OF THE CHURCHES OF CHRIST IN THE U. S. A. and SCHOLARSHIP, EDUCATION AND DEFENSE FUND FOR RACIAL EQUALITY, INC., AS *AMICI CURIAE*

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Supreme Court of the United States

October Term, 1967

No. 813

BERNARD SHAPIRO, Welfare Commissioner of Connecticut,
Appellant,

v.

VIVIAN THOMPSON,
Appellee.

No. 1134

WALTER E. WASHINGTON, *et al.*,
Appellants,

v.

MINNIE HARRELL, *et al.*,
Appellees.

No. 1138

ROGER A. REYNOLDS, *et al.*,
Appellants,

v.

JUANITA SMITH, *et al.*,
Appellees.

On Appeal from the District Courts of Connecticut, District of Columbia and the Eastern District of Pennsylvania

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BRIEF OF AMERICAN JEWISH CONGRESS, COUNCIL OF JEWISH FEDERATIONS AND WELFARE FUNDS, INC., NATIONAL CONFERENCE OF CATHOLIC CHARITIES, NATIONAL COUNCIL OF THE CHURCHES OF CHRIST IN THE U. S. A. and SCHOLARSHIP, EDUCATION AND DEFENSE FUND FOR RACIAL EQUALITY, INC., AS *AMICI CURIAE*

This brief *amici curiae* is submitted with the consent of the parties.

Statement of the Case

Each of these three cases involves an appeal from a decision by a three-judge District Court holding unconstitutional a state or Federal statutory provision imposing a residency requirement for eligibility for aid under the Federal program for Aid to Families with Dependent Children (hereinafter referred to as "AFDC") (Section 17-2d of Chapter 302 of the General Statutes of Connecticut; Section 3-203(a)(b) (1967) of the District of Columbia Code; and Section 432(6) of the Public Welfare Code of Pennsylvania).

With one exception,* each of the plaintiffs-appellees in the three cases are children, and the adults upon whom those children depend for maternal care, who have been denied benefits under AFDC solely on the ground that they have not resided in the respective state or the District of Columbia long enough to comply with the particular residency requirement. The District of Columbia and Pennsylvania cases (Nos. 1134 and 1138) are class actions.

In each of the cases, the defendants-appellants are officials responsible for administration of the AFDC program in their jurisdictions.

AFDC programs provide relief "[f]or the purpose of encouraging the care of dependent children in their own

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* This brief is limited to the question of residency requirements under AFDC programs. Therefore, we do not address ourselves to the case of the one appellee in the District of Columbia case (Vera A. Barley) who challenges a residency requirement denying her relief under another categorical aid program, Aid for the Totally and Partially Disabled.

homes or in the homes of relatives by enabling each state to furnish assistance and rehabilitation and other services, * * *" [42 U.S.C.A., Section 601]. Based upon a complicated formula set forth at 42 U.S.C.A., Section 603, qualifying AFDC state programs are reimbursed by the Federal Government in amounts varying between 50% and 80% of their payments.

Although the residency requirements differ in detail, the rejected applicants suing in each of the three cases would be required to reside within that state or the District of Columbia for one year before being eligible for AFDC benefits. In none of the cases does the respective government suggest that an alternative form of government relief is available to the rejected AFDC applicant, short of placing the child applicants in orphanages.

Although the facts with regard to each particular rejected applicant suing herein differ, the following generalizations can be made:

Appellees were denied relief because of failure to comply with residency requirements without regard to whether they had any alternative means of obtaining the necessities of life. Each of the appellees is unable to work for reasons independent of her having moved to the state, such as sickness, need to stay home to take care of very young children and, in the case of the child applicants, age.

Nothing in the records indicates that any of the rejected applicants suing here entered the respective state or the District of Columbia for the purpose of receiving higher welfare benefits than they received in the place they previously resided. In fact, Minnie Harrell and her family moved to the District of Columbia from an area where

relief payments were higher, Nassau County, New York. Nor is there anything in the records to indicate that the applicants attempted to obtain relief they would not be entitled to but for the fact that they did not reside in the state for the necessary period of time. The records indicate that most of the rejected families moved to the state or the District to be near relatives who at times provide some, albeit inadequate, support.

Interest of the *Amici*

The American Jewish Congress is a national organization of American Jews formed in part to protect the religious, civil, political and economic rights of Jews, to implement Jewish values and to promote the principles of democracy. The sacredness of human life is a foundation stone of Jewish ethics. It requires us to give aid to the poor not only as a charitable act motivated by pity, but as an obligation, an act of justice toward the recipient, who is entitled to it as a right by virtue of his common humanity with the giver. This is reflected in the fact that there is no word for charity in Hebrew; its nearest translation is "tzedakah" which translates into "righteousness" or "social justice." We believe that this fundamental concept of public responsibility to provide for the poor is embodied in the concepts of due process and equal protection.

The Council of Jewish Federations and Welfare Funds, Inc. is a national association of 222 central Jewish community organizations serving 800 communities representing 95% of the Jewish population of the United States. The Council is governed by an annual General Assembly, composed of delegates selected by the member community

organizations, which sets its policies and elects the Board of Directors and officers. In the area of health and welfare, it provides its members with consultation and information on community organization, planning for services to people, budgeting and fund raising. Direct services to member communities include help with representation of the organized American Jewish communities in collaboration with religious bodies and other public interest groups concerned with the provision of adequate, equitable and dignified public welfare services to people in need.

The National Conference of Catholic Charities was established in 1910 and is the coordinating body of the social service program of the Catholic Church in the United States. It seeks to integrate modern technology with the traditional concept of charity among Catholic workers, both professional and volunteer. The Conference provides consultation and planning assistance to local administrators, conducts research projects dealing with the present and future needs in the field, and furnishes information concerning current developments relating to welfare services. It represents the philosophy of Catholic social service to other professional groups, to national coordinating agencies, to the national Congress, and to Federal government offices.

The National Council of the Churches of Christ in the U. S. A. is a membership corporation incorporated in 1950 under the Membership Corporations Law of New York. It is the co-operative agency of thirty-four Protestant and Orthodox religious denominations with an aggregate membership of 42,000,000 throughout the United States. By its certificate of incorporation it is committed "to promote the application of the law of Christ in every rela-

tion of life." Since 1960 it has been its policy "to work for availability of adequate public assistance for all needy people; the elimination of state and local residence requirements for public assistance * * *."

The Scholarship, Education and Defense Fund for Racial Equality, Inc. (SEDFRE) is an independent national organization formed in 1962 to assist local community organizations and civil rights groups. Its services include scholarship assistance, specialized legal action and information activities on welfare and related government assistance. SEDFRE helps disenfranchised and deprived Negroes and poor whites to meet needs ranging from voting rights and improved schools to street lights and paved streets. It also seeks a better way to acquaint welfare clients with their rights under the law and encourages them to take the necessary steps to make sure that their rights are respected.

These organizations join in this brief because they have become increasingly concerned with the deepening gulf between the great majority of Americans who enjoy the benefits of our unparalleled affluence and the minority who have been denied the opportunity to share in our abundance. We believe that the concepts of human dignity embodied in our Constitution and Bill of Rights must be asserted in this area to prevent this society from abandoning its poor.*

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* We have been authorized by the National Board of the Young Women's Christian Association of the U. S. A. to inform the Court that it supports the position taken in this brief. The National Board of the Young Women's Christian Association of the U. S. A. is a corporation organized in 1907 pursuant to the laws of the State of New York and is entrusted with the continuing work of the Young Women's Christian Association of the U. S. A., an organization of autonomous member Associations. As present it is composed of 421 community and 443 student Associations with 1,439,372 members and 878,666 additional participants.

Questions to Which This Brief is Addressed

1. Are children who are denied relief under the AFDC program solely because of noncompliance with a residency requirement deprived of their right to due process of law, in violation of the Fifth and Fourteenth Amendments?

2. Does such denial of relief under the AFDC program impose an unconstitutional burden on freedom to travel?

Summary of Argument

IA. Children who starve because our government fails to provide them with relief are deprived of due process of law in violation of the Fifth and Fourteenth Amendments. The concept that government has an obligation to provide for persons in need is deeply imbedded in our governmental system. It was embodied in Sixteenth Century statutes that formed the basis of subsequent legislation adopted by the American colonies and states. The Social Security Act of 1935 implicitly acknowledged that the obligation to assist the poor extends to the national government.

B. Historically, the obligation has not been accompanied by recognition of the right of the poor person to demand assistance. One result has been widespread denial of assistance, in part through "settlement laws," the forerunners of residency requirements. Residency requirements have the effect of denying relief even where there is no alternative escape from starvation.

C. The resulting denial of assistance is a deprivation of property. Where it leaves children to starve, it must be regarded also as a deprivation of "life" as that term is used in the Fifth and Fourteenth Amendments. As shown below in Point II, the justifications for that deprivation are without merit. Hence, the deprivation is a denial of due process.

D. Our constitutional system requires recognition of an individual enforceable right to poor relief. Absent such a right, the Due Process Clauses cease to be a protection for the poor as well as the rich.

IIA. This Court has repeatedly upheld the right to travel as one based on the Constitution. It has specifically held that the States may not exclude indigents.

B. Residency requirements place a burden on the right to travel because those poor who would travel face the threat of starvation.

C. The right to travel is closely related to the constitutional rights of free expression and therefore cannot be restricted except for compelling reasons. No such compelling reasons appear here. The reasons usually given hardly rise higher than considerations of covenience. Moreover, residency requirements deal with the asserted evils by a blunderbuss technique that is constitutionally impermissible.*

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* This brief is not addressed to a third basis for challenging residency requirements, that they constitute a deprivation of equal protection of the laws. We believe that that challenge is also valid because of the absence of rational justification for the requirement.

ARGUMENT

POINT I

Children who starve because government fails to provide relief are deprived of due process of law, in violation of the Fifth and Fourteenth Amendments.

It is our position that a denial of AFDC assistance because of a residency requirement which may cause starvation and loss of life is a violation of the constitutional requirement of due process of law. Such a denial withholds assistance regardless of the reason for the applicant's presence in the state. Such an action is an arbitrary denial of property and, not inconceivably, of life, without due process of law.

A. The Obligation of Government to Provide for Persons in Need is Deeply Imbedded in Our Governmental System.

1. The test of what constitutes due process of law

In *Powell* v. *Alabama,* 287 U. S. 45, 65 (1932), this Court said:

> One test which has been applied to determine whether due process of law has been accorded in given instances is to ascertain what were the settled usages and modes of proceeding under the common and statute law of England before the Declaration of Independence, subject, however, to the qualification that they be shown not to have been unsuited to the civil and political condition of our ancestors by having been followed in this country after it became a nation.

Another test of the scope of the constitutional due process guarantees, probably the same in effect, is the requirement that government conform to "that whole community sense of 'decency and fairness' that has been woven by common experience into the fabric of acceptable conduct." *Breithaupt* v. *Abram,* 352 U.S. 432, 436 (1957). Due process bars governmental action which "shocks the conscience." *Rochin* v. *California,* 342 U.S. 165, 172 (1952). It requires protection of those rights that are "so rooted in the tradition and conscience of our people as to be ranked as fundamental." *Id.* at 169, citing *Snyder* v. *Massachusetts,* 291 U.S. 97, 105 (1934); see also *Palko* v. *Connecticut,* 302 U.S. 319, 325 (1937).

We submit that, by either of these tests, a statute that exposes children to the risk of starvation deprives them of due process of law.

2. The British antecedents

Provision for the basic needs of the poor has been recognized as a duty of society since biblical times.[1] For four hundred years this need has been recognized by Anglo-American law as an obligation of temporal government.

In 1572, Parliament passed a law (14 Elizabeth c. 5) which was a landmark in the development of governmental assistance to the poor.[2] It established as national policy

1. Bible (King James Version), *Deuteronomy* 14:28, 29, 26:12; Matthew 25:31-46.

2. English law on the subject of poor relief is relevant here not only because it illuminates the due process concept but also because American laws for relief of the poor were shaped by the English antecedents. Riesenfeld, "The Formative Era of American Public Assistance Law," 43 *Calif. L. Rev.* 175, 177 (1955).

that the poor must be provided for through monies raised by public taxation.[3] Revision in 1597 (39 Elizabeth c. 3) and, more important, in 1601 (43 Elizabeth c. 2) did much to establish the character of poor relief. tenBroeck, Jacobus, "California's Dual System of Family Law: Its Origin, Development and Present Status," Part I, 16 *Stanford L. Rev.* 257, 258 (1964).[4]

Professor tenBroeck described the salient feature of that period (at 262):

> The central concept and great achievement of the Elizabethan poor law was the firm establishment of the principle of public responsibility to maintain the destitute. Through it, the final step was taken, permanently shifting a part of the burden to relieve economic distress from the ecclesiastical, private, and voluntary to the civil, public and compulsory. The assumption of responsibility, moreover, was made by the nation and its application was nationwide.

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3. *Id.* at 180 *et seq.*

4. The principal section of 43 Eliz. c. 2 provided:

> That the churchwardens of every parish, and four * * * substantial householders there * * * shall be called overseers of the poor of the same parish; and they * * * shall take order from time to time, by and with the consent of two or more * * * justices of peace * * * for setting to work all such persons, married or unmarried, having no means to maintain them, and use no ordinary and daily trade of life to get their living by: and also to raise * * * (by taxation of every inhabitant * * * and of every occupier of lands, houses * * * or saleable underwoods in the same parish * * *) a convenient stock of flax, hemp, wool, thread, iron and other necessary ware and stuff, to set the poor on work: and also competent sums of money for and towards the necessary relief of the lame, impotent, old, blind, and such others among them, being poor and not able to work, and also for the putting out of such children to be apprentices * * *. (As modernized by Professor Riesenfeld, *id.* at 178.)

The obligation of government to insure survival and the role of the judiciary in providing relief to the poor is reflected in Gilbert's Act of 1782, summarized by Sidney and Beatrice Webb as follows (Webb, S. & B., English Local Government. English Poor Law History, Vol. 1, Longmans Green & Co. Ltd. (1927) at 171):

> * * * any applicant who could not get employment in the ordinary way should by the Poor Law Guardians —without explaining how—be provided with it and be fed and lodged until it could be given. Failing such relief, any Justice of the Peace was expressly empowered, after inquiry upon oath, to order "some weekly or other relief."

In sum, the government duty to provide for the poor was so firmly implanted that, towards the end of the 18th century, Blackstone could state in his Commentaries (page 95, American Editions of J. B. Lippincott & Co. from the 19th London Edition, page 131, 12th ed., London, 1793):

> The law not only regards life and member and protects every man in the enjoyment of them, but also furnishes him with everything necessary for their support. For there is no man so indigent or wretched, but he may demand a supply sufficient for all the necessaries of life from the more opulent part of the community, by means of the several statutes enacted for the relief of the poor.

This statement appears in Book I, entitled "Of the Rights of Persons," Chapter 1, entitled "Of the Absolute Rights of Individuals."

This "law of the land" was not confined to the homeland. An indication of England's concern that her colonial

governments provide for the needs of the poor is reflected in the request of the Committee for Trade and Foreign Plantations of the English Privy Council in 1680 for information as to provisions made in Connecticut for "relieving poor, decayed and impotent persons." Capen, HISTORICAL DEVELOPMENT OF THE POOR LAW OF CONNECTICUT (Columbia U. Press, 1905) at 22.

3. The American antecedents

A history of the reception of the English poor law into the thirteen original colonies, particularly with regard to government obligation to provide for the poor and the law of settlement is set forth by Riesenfeld (*op. cit. supra* at 203, *et seq.*). The early laws of the Massachusetts Bay Colony and New Plymouth clearly imposed the obligation on government officials (*Id.* at 204-208).

A detailed history of the development of the poor law in Connecticut is obtained in Capen, *op. cit. supra, passim.* (See also Riesenfeld, *supra,* at 209-212, 226-228.) As early as 1640, the colony of New Haven had provided for its poor (Capen, *op. cit. supra* at 22-23). The two colonies of Connecticut and New Haven had been united in 1665. In 1673, the general court ordered as follows:

> * * * every town within this colony, shall maintain their own poor. * * * If any person come to live in any town in this government, and be there received and entertained three months, if by sickness, lameness or the like, he comes to want relief; he shall be provided for by that town wherein he was so long entertained, and shall be reputed their proper charge, unless such person has within the said three months been

> warned by the constable, or some one or more of the selectmen of that town, not there to abide without leave first obtained of the town, and certify the same to the next court of assistants who shall otherwise order the charge arising about him according to justice. (Capen, *supra,* at 29-30, referring to Law No. 57 of 1673.)[5]

This public responsibility to support the destitute was also recognized in those states organized west of the Allegheny Mountains. Abbott, PUBLIC ASSISTANCE, AMERICAN PRINCIPLES AND POLICIES, Vol. 1 (1940), pp. 3-35. To give only one example (*Id.* at 5), Kansas acknowledged this government responsibility in its first constitution in 1859 by providing, in Article vii, sec. 4:

> The respective counties of the State shall provide as may be prescribed by law for those inhabitants who, by reason of age, infirmity, or other misfortune, may have claims upon the sympathy and aid of society.

Thus England, the American colonies and the states regarded themselves as being legally obligated to provide for the poor. Justice Brewer was speaking of a principle by then fundamental to the entire country when he said, in *State ex rel. Griffith* v. *Osawkee Twp.,* 14 Kan. 418, 421 (1875), prior to his elevation to this Court:

> The relief of the poor, the care of those who are unable to care for themselves, is among the unquestioned objects of public duty. In obedience to the impulses of common humanity, it is everywhere so recognized.

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5. For developments in Pennsylvania, see Beitel, TREATISE ON THE POOR LAWS OF PENNSYLVANIA (T. & J. W. Thompson & Co., Pa. (1899)); Heffner, HISTORY OF POOR RELIEF LEGISLATION IN PENNSYLVANIA, 1682-1913, Holzapfel Publishing Co. (1913).

With the adoption of the Social Security Act of 1935, the involvement of government in providing basic needs assumed new dimensions. "The law established the individual's immediate welfare as a matter of national concern entitled to consideration in the deployment of national resources." Wedemeyer, J. M. and Moore, Percy, "The American Welfare System," 54 *Calif. L. Rev.* 326, 347 (1966). Adoption of the Act constituted recognition that participation of the national government was inevitable "* * * if the people were not to starve." *Steward Machine Co.* v. *Davis,* 301 U. S. 548, 586 (1937).

B. The Absence of an Indvidual Right to Enforce the Governmental Responsibility Results in Large-Scale Evasion of the Responsibility.

1. The denial of an individual right

While British and Anglo-American law thus recognized a governmental obligation toward the poor, it must be conceded that it did not recognize an individual right to enforce that obligation. As the Webbs pointed out, "What was enacted was not a right at all, but an obligation." *Op. cit. supra,* p. 401. Poverty was treated as a public nuisance, subject to abatement by public officials (*ibid.*).

Similarly, in this country, the obligation of the government to provide for the poor was not regarded as vesting a right in the individual poor person to compel government to meet its obligation through recourse to the courts.

> The English law has perhaps again influenced our American statutes and their interpretation on this point. In England it has long been an established

> legal principle that the duty of the local authority to relieve the poor is "a duty owed to the public and not to the poor person himself," and that "no action can be brought * * * by the poor person if relief is refused him, or if an officer is negligent in giving relief." (Abbott, *op. cit. supra,* p. 20, citing W. Ivor Jennings, THE POOR LAW CODE (London, 1930), p. lxxvi.)

Cf. Reich, C., "The New Property," 73 *Yale L. J.* 733 (1964); Reich, C., "Individual Rights and Social Welfare: The Emerging Legal Issues," 74 *Yale L. J.* 1245 (1965).

2. The resulting denial of aid to the poor

The isolation of the obligation of government from the development of corresponding rights and duties has had disastrous results. Without enforcement of individual rights by court action, local administrators were free to limit relief in almost any way they saw fit. Chief among the limitations were the settlement laws, the direct ancestors of the present day residency requirements. tenBroeck, *op. cit. supra,* at 263. The resulting evils, from Elizabethan times to the present, are described by Professor tenBroeck (*Id.* at 265):

> Only those who had been born in a community or had long lived there were eligible. Other poor persons were kept out or removed to the place of their settlement. The size of the taxing and paying unit thus was determinative. From the community's point of view it supported only its own. From the pauper's point of view, he was bound to the place of his misfortune, restricted in his free movement and his personal opportunity. From society's point of view, the economy was fragmented, rendering more difficult the solution of

economic problems that were regional and national. All of this is true today.[6]

Residency requirements are applied regardless of whether the rejected recipients have any alternative source of support for staying alive. As far as the state is concerned, these people are left to starve to death. If they are fortunate, they may obtain relief from a voluntary charity of an amount the charity feels it can afford. No voluntary organization is required to provide such relief. And when there are no private agencies or no money, people not receiving public relief may actually starve or freeze to death.

Thus, implicit in the defense of these three states to their right to use residency requirements as an absolute bar to AFDC payments, no matter how great the need of the applicant, is the proposition that the state may let children residing within its boundaries die for lack of such necessities as food and shelter.

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6. For other evils see Riesenfeld and Maxwell, MODERN SOCIAL LEGISLATION, 709 (1950):

> The need for or the actual receipt of assistance created * * * a veritable *"pauper status."* Thus the pauper was required to wear a badge with the letter P, a practice which was first given statutory sanction by the Pennsylvania Poor Law Amendment Act of 1718, 3 Pa. Stat. at L. 1712-1724, 221 (1896); he was required to be farmed out to the bidder at public auction, see, *e.g.*, Indiana Poor Law of 1807 * * *; he could be thrown into the poor-house against his will, see, *e.g.*, *Harrison* v. *Gilbert*, 71 Conn. 724, 43 Atl. 190 (1899) (denying a writ of habeas corpus); he could and apparently still can, without violation of his constitutional guarantees, be forcibly removed to his place of settlement; *Lovell* v. *Seeback*, 45 Minn. 465, 48 N.W. 23 (1891); he lost the right to vote and still does under the constitution of Massachusetts, Mass. Const. Art. of Amendments III, and Texas, Tex. Const. Art. VI, Sec. 1.

AFDC is a last resort. The hardship which regularly results from its denial because of failure to meet residency requirements is aptly illustrated by the desperate situation Minnie Harrell and her three children face (one of the families in the District of Columbia case). Ill with cancer, unable to work, unable to continue staying at the small home of her brother (who has a wife and six children he is trying to support on wages of $1.60 per hour as a tire changer), the Child Welfare Division of the Department of Public Welfare of the District of Columbia can only suggest that Minnie Harrell consider placing her children in an orphanage.

Nowhere in the record of any of the three cases is there any suggestion that denial of AFDC benefits is dependent upon the availability of alternative relief programs for which the rejected AFDC applicants are eligible. The extent of the failure of AFDC to meet the needs of the one child out of every five children in this country who lives below the poverty line is implicit in the following statement (Orshansky, "Counting the Poor: Another Look at the Poverty Profile," *Social Security Bulletin,* U. S. Dept. of Health, Education and Welfare, January, 1965, pp. 15-16):

> In contrast to this total of 15.6 million needy children, in December 1963 only 3.1 million children were receiving assistance in the form of aid to families with dependent children, the public program designed especially for them.

Children are kept off the welfare rolls and denied AFDC payments for many reasons. One of them is because such children fail to meet residency requirements.

C. The Denial of AFDC Relief Because of Residency Requirements Results in a Denial of Life and Property.

In 1964, there were 34.1 million Americans, of whom almost 15 million were children, whose income was below the poverty line.[7] Orshansky, "Recounting the Poor—A Five-Year Review," *Social Security Bulletin,* U. S. Dept. of Health, Education and Welfare, April 1966, pp. 12, 13. For these people, each day requires a choice between an adequate diet of the most economical type and some other necessity because there is not enough money for both. Of the 15 million children living below the poverty line in 1964, 5.7 million were under age six (*ibid.*).

Whether one regards the benefits provided pursuant to the categorical assistance programs of the Social Security Act as "rights" or "privileges," they must be recognized as basic to human survival. Unlike many other benefits provided by government, the Social Security Act programs provide only for needs basic to life and usually less than that. Although states establish minimum standards of health and decency the Act only requires assistance be furnished "as far as practicable under the conditions in such State." 42 U.S.C.A. Section 601. As a result many states pay only a percentage of their own minimum standard. The survival which these payments permit is commonly one in which the beneficiaries are ill housed, ill clothed and

---

7. The poverty line is defined in Orshansky, "Counting the Poor," *op. cit. supra,* pp. 5-13. It is based on an "economy" food plan prepared by the Department of Agriculture for "temporary or emergency use when funds are low" (at p. 6) and allows an average of 70 cents per day per person for food and an additional $1.40 per day per person for all other items, including housing, medical care, clothing and carfare (p. 4).

ill fed. As we have just been told by the National Advisory Commission on Civil Disorders (U. S. Riot Commission Report, Bantam Books ed. (1968), p. 458):

> This sum [an average of about $36 monthly for each recipient of AFDC] is well below the poverty subsistence level under any standard. The National Advisory Council on Public Welfare has commented:
>
> > "The national average provides little more than half the amounts admittedly required by a family for subsistence; in some low-income states, it is less than a quarter of that amount. The low public assistance payments contribute to the perpetuation of poverty and deprivation that extend into future generations."

We submit that the poor are plainly deprived of "property" when government withholds the relief it is responsible for supplying. The deprivation of life itself, however, is of greater concern. As we have shown, the residency requirement is imposed by the states without regard to the consequences to the individual family or its children. They are literally left to starve. Even if they escape death the resulting impairment of both mental and physical health must be viewed as a deprivation of "life" as that term is used in the Fifth and Fourteenth Amendments.[8]

We recognize, of course, that it is not enough to show that there has been a deprivation of life or property. The deprivation must be "without due process of law." Here, it is argued that the deprivation is not without due process because the residency requirement is reasonably designed

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8. See *New York Times,* March 25, 1968, p. 47, "Hunger and Sickness Affect Mississippi Negro Children"; *New York Post,* March 27, 1968, p. 2, "Secret Report: 10 Million Go Hungry in U.S."

to achieve proper public objectives. The various justifications given for the requirement are dealt with below (Point IIC) in the discussion of the restraint on the right to travel. The remaining point to be made here is that the denial of due process may not be upheld on the ground that the individual poor person has no right to obtain enforcement of the governmental responsibility.

D. Our Constitutional System Requires Recognition of an Individual Enforceable Right to Poor Relief.

We believe we have shown that the obligation of government to provide poor relief is so fundamental and of such long standing as to be regarded as part of the basic "law of the land" which is incorporated in the due process concept. It would be inconsistent with our system of law to recognize this responsibility while denying those who would benefit from it the right to enforce it.

Absent such a right, the Federal and state governments and their agents are free to adopt any rule they may choose to limit their performance of their recognized responsibility. This Court said in *Jones* v. *Securities and Exchange Commission,* 298 U. S. 1, 23-24 (1935):

> * * * to the precise extent that the mere will of an official or an official body is permitted to take the place of allowable official discretion or to supplant the standing law as a rule of human conduct, the government ceases to be one of laws and becomes an autocracy.

See also Justice Brandeis concurring in *St. Joseph Stockyards Co.* v. *United States,* 298 U. S. 38, 84 (1936); Justice Jackson concurring in *Youngstown Sheet & Tool Co.* v. *Sawyer,* 343 U. S. 579, 646 (1952).

The Due Process Clause has stood as a guarantee of the liberties of Americans largely because of its expanding enforcement of purely procedural rights. The fact that the right of the individual poor person to claim his due has not been recognized up to now is not a barrier to present recognition, if in fact the right is essential to assuring "decency and fairness." As this Court said in *Wolf* v. *Colorado,* 338 U.S. 25, 27 (1949):

> It is of the very nature of a free society to advance in its standards of what is deemed reasonable and right. Representing as it does a living principle, due process is not confined within a permanent catalogue of what may at a given time be deemed the limits or the essentials of fundamental rights.

See also *Frank* v. *Maryland,* 359 U.S. 360, 371 (1959). It is particularly appropriate that due process develops so as to protect the poor. As stated in *Wolf, supra,* 338 U.S. at 27:

> This Clause exacts from the States for the lowliest and the most outcast all that is "implicit in the concept of ordered liberty" (citing *Palko* v. *Connecticut,* 302 U.S. 319, 325 (1937)).

POINT II

Residency requirements place an unconstitutional burden on the right to travel.

Government cannot bargain with the poor so as to buy up basic rights of citizenship in exchange for the necessities of life. Residency requirements in effect take from the poor the right to travel, the right to make the most of job opportunity and freedom to associate with relatives and loved ones.

A. The Right to Travel

In *United States* v. *Guest,* 383 U.S. 745, 757 (1966), this Court said:

> The constitutional right to travel from one State to another, and necessarily to use the highways and other instrumentalities of interstate commerce in doing so, occupies a position fundamental to the concept of our Federal Union. It is a right that has been firmly established and repeatedly recognized.

Again at page 759, this Court said:

> Although there have been recurring differences in emphasis within the Court as to the source of the constitutional right of interstate travel, there is no need here to canvas those differences further. All have agreed that the right exists.

The importance attached by the Court to the right to travel is also reflected in cases dealing with international travel. *Kent* v. *Dulles,* 357 U. S. 116, 126 (1958); *Aptheker* v. *Secretary of State,* 378 U.S. 500, 505 (1964).

The right to travel includes the right to settle in a state. In *Edwards* v. *People of the State of California,* 314 U.S. 160 (1941), this Court held that a law making it a misdemeanor to assist in bringing into the state any indigent person who is not a resident of the state was unconstitutional. The defendant Edwards had assisted his indigent brother-in-law to enter California for the purpose of residing there. California argued that it could not bear the financial burden resulting from the migration of indigents to the state (at 168):

> Their coming here has alarmingly increased our taxes and the cost of welfare outlays, old age pensions,

> and the care of the criminal, the indigent sick, the blind and the insane.
>
> Should the States that have so long tolerated, and even fostered, the social conditions that have reduced their people to their state of poverty and wretchedness, be able to get rid of them by low relief and insignificant welfare allowances and drive them into California to become our public charges, upon our immeasurably higher standard of social services? Naturally, when these people can live on relief in California better than they can by working in Mississippi, Arkansas, Texas or Oklahoma, they will continue to come to this State.

This Court rejected that argument (at 173):

> The State asserts that the huge influx of migrants into California in recent years has resulted in problems of health, morals, and especially finance, the proportions of which are staggering. It is not for us to say that this is not true. We have repeatedly and recently affirmed, and we now reaffirm, that we do not consider it our function to pass upon the wisdom, need, or appropriatness of the legislative efforts of the States to solve such difficulties [citing cases].
>
> But this does not mean that there are no boundaries to the permissible area of State legislative activity. There are. And none is more certain than the prohibition against attempts on the part of any single State to isolate itself from difficulties common to all of them by restraining the transportation of persons and property across the borders.

Thus, this Court has made it clear that the poor have the right to travel as well as the rich. As Justice Jackson said, concurring in *Edwards* (at 185):

> Any measure which would divide our citizenry on the basis of property into one class free to move from

> state to state and another class that is poverty-bound to the place where it has suffered misfortune is not only at war with the habit and custom by which our country has expanded, but it is also a shortsighted blow at the security of property itself.

See also the concurring opinion of Justice DOUGLAS (at 177).

B. The Burden on the Right to Travel Imposed by Residency Requirements

Residency requirements impair the right to travel when they burden its exercise by compelling forfeiture of government benefits. Here, as in *Sherbert* v. *Verner,* 374 U.S. 398 (1963), the citizen is forced to choose between the exercise of basic rights (there, the free exercise of religion) and the forfeiture of government benefits. The citizen is subjected to "a choice between the rock and the whirlpool." *Frost & Frost Trucking Company* v. *Railroad Commission,* 271 U.S. 583, 593 (1926).

This is precisely the predicament faced by AFDC recipients. The pressure to forego their right to travel is unmistakable. Denial of the basic benefits involved here derives solely from the exercise of the constitutionally protected right to travel.

This Court has consistently rejected distinctions based on the fact that the potential beneficiary is not prevented from exercising his basic rights, but merely deterred or inhibited. "The threat of sanctions may deter their exercise almost as potently as the actual application of sanctions." *Aptheker, supra,* 375 U.S. at 516, citing *NAACP*

v. *Button,* 371 U.S. 415 (1963). Even a "chilling effect" on the exercise of basic rights is sufficient to condemn restrictive action. *Dombrowski* v. *Pfister,* 380 U.S. 479 (1965).

This is true where the benefits derivable from the state are far less valuable than those in question here. Indeed, even where the benefits are completely gratuitous and even ephemeral, they may not be subjected to conditions which "deter or inhibit" the exercise of basic rights. *Speiser* v. *Randall,* 357 U.S. 513 (1958) (a tax exemption conditioned on a loyalty oath).

The travels of the poor are already sufficiently encumbered by the fact of their poverty. As we show below in Point IIC, the poor travel for reasons far more basic than their affluent contemporaries.

It should be remembered that AFDC benefits are given only when the family has no alternative means of support. 42 U.S.C.A. §602(7). AFDC families cannot, in many cases, choose to forego the benefit and exercise the liberty to travel. Practically speaking, conditioning welfare benefits on residency tends to tie the poor to the place of their misfortune in the same manner as the English statutes regarding settlement and removal of the poor in the 18th Century. Those who do succeed in moving out of unsatisfactory circumstances often find themselves in a shocking position.

1. Some American citizens are stateless, having lost residence in one place without gaining it in another, and ineligible for assistance anywhere. Some of

these people can never become eligible because in certain states they cannot gain residence unless they are self-supporting.

2. Others are sent back to their place of residence even when their return is undesirable from the point of view of the individual or the community. Simons, Saville H., "Services to Uprooted and Unsettled Families," in *Social Welfare Forum* (National Conference on Social Welfare, 1962, pp. 165, 171).

C. The Restrictions Placed on the Right to Travel by Residency Requirements Are Not Justified by Compelling Necessity.

Like most constitutional rights, the right to travel is subject to restriction in the public interest. Yet, this Court has made it plain that restrictions may not be lightly imposed or sustained.

This Court has frequently referred to "the preferred place given in our scheme to the great freedoms secured by the First Amendment." *Thomas* v. *Collins,* 323 U.S. 516, 530 (1945). As stated in *Thomas,* "Only the gravest abuses, endangering paramount interests, give occasion for permissible limitation" (323 U.S. at 530). In such cases, the "subordinating interest of the State must be compelling." *National Association for the Advancement of Colored People* v. *Alabama,* 357 U.S. 449, 463 (1958), quoting Justice FRANKFURTER concurring in *Sweezey* v. *New Hampshire,* 354 U.S. 234, 265 (1957). See also *Marsh* v. *Alabama,* 326 U.S. 501, 509 (1946); *Prince* v. *Massachusetts,* 321 U.S. 158, 164 (1944).

In *Aptheker,* this Court placed freedom to travel in the same category, saying (378 U.S. at 517):

> Similarly, since freedom of travel is a constitutional liberty closely related to rights of free speech and association, we believe that appellants in this case should not be required to assume the burden of demonstrating that Congress could not have written a statute constitutionally prohibiting their travel.

While residency requirements are not direct limitations on travel, when the choice is possible starvation if one does travel, the effect is little different from a direct prohibition.

Leeway may be given, presumably, for regulation by the states in areas of direct concern. When a state conditions the right to vote, or to become a member of the bar, on minimum residency, it can be concluded that, on balancing the indirect limitation on travel against the interest of the state, the state is legitimately protecting its electoral process or the functioning of its courts. Familiarity with conditions in the state is reasonably related to voting and familiarity with local law and court processes is reasonably related to the attorney function. In each case, the small limitation on travel is justified. But where, as here, the asserted interest of the state is balanced against the very life of a person, that interest must yield.

Moreover, we are dealing here with a national program, laid down in a national statute and funded primarily by the national government. The states that impose residency requirements are saying, in effect, that the benefits of this national program will be made available to those families

who stay in their home states but not to those who exercise their right to travel—to obtain jobs, to rejoin families or for any other reason, good or bad. We submit that this cannot be made a feature of a Federal program by the participating states. Not even the fact that the limitation may have been authorized by Congress (see 42 U.S.C.A. §602(b)) can immunize it against the constitutional right to travel from state to state.

In considering whether the residency limitation on freedom to travel is justified by compelling public interests, it should be noted, first, that it does not further but rather frustrates the purpose of the Federal statutory scheme. The purpose of the AFDC program is set forth in the Federal statute creating the program and authorizing Federal contributions to its financing:

> For the purpose of encouraging the care of dependent children in their own homes or in the homes of relatives by enabling each State to furnish financial assistance and rehabilitation and other services, as far as practicable under the conditions in such State, to needy dependent children and the parents or relatives with whom they are living to help maintain and strengthen family life and to help such parents or relatives to attain or retain capability for the maximum self-support and personal independence consistent with the maintenance of continuing parental care and protection, there is authorized to be appropriated for each fiscal year a sum sufficient to carry out the purposes of this subchapter. Social Security Act of 1935, § 401, as amended, 42 U.S.C.A., § 601.

Residency requirements bear no relationship whatever to this purpose. In fact, failure to provide assistance pay-

ments for one year will frustrate the purpose of the statute, often resulting in the break-up of homes prior to the time the family can become eligible for welfare. For example, the Harrell family in the District of Columbia case has been advised that since Mrs. Harrell and her three children are not eligible for AFDC payments, Mrs. Harrell should consider breaking up her home and placing her children in an orphanage. (See letter dated April 20, 1967 from Mrs. Jane Berry, Supervisor, D.C. Department of Public Welfare, annexed to the complaint in No. 1134 as Exhibit A.) The three-judge court in Delaware, recently holding that the AFDC residency requirement in Delaware is unconstitutional, said:

> It is evident to us that as to these families living in Delaware for less than one year the denial of public assistance fails to carry out the stated purposes for the Public Assistance Code. It in fact tends to frustrate them. The residency requirement prevents prompt assistance to some of the State's needy and distressed and to that extent is the antithesis of "humane." It also necessarily results in pressure on the solidarity of the family unit. Nor given these circumstances is it an acceptable answer to say that until they are here one year such persons are not a part of the state's needy and distressed. The discrimination based on length of residency thus finds no constitutional justification in the purpose declared in the statute itself. Green v. Department of Public Welfare, 270 F. Supp. 173, at 177 (D. Del., 1967).

What, then, are the justifications offered for residency requirements? They appear to be as follows: (1) the need to discourage poor persons from coming into the state or remaining in the state; (2) the need to make it unprofit-

able to come to a state to obtain higher AFDC benefits; (3) the need to provide an objective test of whether there is an intent to become a permanent resident of the state; and (4) the need to obtain certainty in preparing state budgets.

The first of these justifications is squarely in conflict with this Court's decision in the *Edwards* case. The direct holding of that case was that states may not exclude indigents.

The claim that residency requirements are needed in order to facilitate budgeting demeans our system of constitutionally protected rights. It is sufficient to say, as this Court said in *Carrington* v. *Rash,* 380 U.S. 89, 96 (1965), that "States may not casually deprive a class of individuals" of a valuable right (there, the right to vote) "because of some remote administrative benefit to the State."

The other two justifications are dealt with in detail in the decisions of the courts below in these three cases, as well as in decisions by other three-judge District Courts in cases now pending. We make but a few points here.

The legislative history of most if not all residency provisions reveals an assumption that indigents move from state to state to achieve higher welfare benefits and a further assumption that a residency requirement will halt or impede such movement (see Opinion of the court below in No. 813, App. 26a). Not only is the premise that people move to a state for the purpose of obtaining welfare assistance demonstrably false, but also the purpose of deter-

ring movement fails completely. As Simons wrote several years ago (*op. cit. supra,* p. 174):

> All evidence shows this not so. People move primarily to secure employment, to be with relatives, sometimes to find a more favorable climate, or in order to cope with emotional problems. California, Arizona and Florida have the highest residence requirements permitted, but they continue to have the highest in-migration in the country. On the other hand, in New York State even before the Anti-Abuse Law went into effect, when there was no legal residence requirement for public assistance, less than 2 per cent of the cases receiving assistance had been in the state less than one year, even though New York has high assistance standards and is surrounded by states that make lower payments.

Simon's statements are supported by statistics compiled by Robert J. Lampman from 1950 and 1960 census figures. "Population Change and Poverty Reduction, 1947-1975," in Fishman, L.(ed.), POVERTY AND AFFLUENCE (1966), pp. 36-37. Moreover, there is no indication from states that have repealed residency statutes of any increase in the number of in-migrants seeking a welfare bounty.

The simple fact is that poor people move for a variety of reasons. By far the largest population shift of recent decades has been that of the Southern Negro. That shift has been due primarily to the displacement of Negroes from Southern agriculture and increases in industrial employment in the North, as the National Advisory Commission on Civil Disorders made clear in its recent Report (*op. cit. supra,* pp. 236-242). See also, Myrdal, AN AMERICAN DILEMMA, pp. 188-9, 191, 193-6, 251 (1944).

Undoubtedly, *some* people move to obtain higher welfare benefits, but it should be noted that this is not true of any of the plaintiffs before this Court or in other cases challenging residency requirements in lower courts. For example, Vivian Thompson (in No. 813), Gloria Jean Brown, Clay Mae Legrant, Minnie Harrell (in No. 1134) and Mrs. Loretta Ramos (*Ramos* v. *Health & Social Service Board,* 276 F. Supp. 474 (E.D. Wisc. 1967)) and their children came to the respective jurisdictions to be near to or live with relatives. Mr. Green (*Green* v. *Dept. of Public Welfare, supra*) came to take a job as a construction laborer.

In any event, the residency requirement punishes not only those who may conceivably move for higher welfare payments but also the family looking for work and even the man who comes to the state having a job which ends for reasons beyond his control. The good are thus punished in order to get to the few bad. This blunderbuss technique is not constitutionally permissible, particularly where rights of freedom are involved. *Elfbrandt* v. *Russell,* 384 U.S. 11, 18-19 (1966); *Shelton* v. *Tucker,* 364 U.S. 479, 488 (1960), and cases there cited. As this Court said in *N.A.A.C.P.* v. *Button, supra,* 371 U.S. at 438:

> Broad prophylactic rules in the area of free expression are suspect. [Citations omitted.] Precision of regulation must be the touchstone in an area so closely touching our most precious freedoms.

We submit that the various justifications given for the residency requirement do not reveal that "compelling" interest of the state which alone can justify curtailment of constitutional freedoms. *N.A.A.C.P.* v. *Alabama, supra.* For that reason, the requirement must be held invalid.

Conclusion

It is respectfully submitted that the judgments below in each of these cases should be affirmed.

Respectfully submitted,

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April, 1968

SUPREME COURT OF THE UNITED STATES [Enclosed, Smith to Rehnquist, 1968, Sept. 20]

October Term, 1968

No. 9

BERNARD SHAPIRO, Welfare Commissioner of Connecticut,

Appellant,

v.

VIVIAN THOMPSON,

Appellee.

No. 33

WALTER E. WASHINGTON, et al.,

Appellants,

v.

CLAY MAE LEGRANT, et al.,

Appellees.

No. 34

ROGER A. REYNOLDS, et al.,

Appellants,

v.

JUANITA SMITH, et al.,

Appellees.

On Appeal from the District Court of Connecticut, District of Columbia and the Eastern District of Pennsylvania

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SUPREME COURT OF THE UNITED STATES

October Term, 1968

No. 9

BERNARD SHAPIRO, Welfare Commissioner of Connecticut,

Appellant,

v.

VIVIAN THOMPSON,

Appellee.

No. 33

WALTER E. WASHINGTON, et al.,

Appellants,

v.

CLAY MAE LEGRANT, et al.,

Appellees.

No. 34

ROGER A. REYNOLDS, et al.,

Appellants,

v.

JUANITA SMITH, et al.,

Appellees.

On Appeal from the District Court of Connecticut,
District of Columbia and the Eastern District of Pennsylvania

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SUPPLEMENTAL BRIEF FOR APPELLEES ON REARGUMENT

The facts are stated and the several questions of law fully argued in the separate briefs already filed by the Appellees in each of these three cases. We reaffirm those arguments without qualification. We should also remind the

Court of the issues peculiar to individual cases, which are covered in the separate briefs, such as the claim that the Connecticut statute is unconstitutional because of its discrimination against immigrants from other States who "enter Connecticut without visible means of support for the immediate future." See Brief for Appellees in Shapiro v. Thompson, pp. 24-28.

The primary purpose of this Supplemental Brief is to summarize a single narrow theme running through all the cases -- drawing the arguments together -- that requires affirmance of the judgment in each.

SUMMARY OF ARGUMENT

I

These three cases challenge the Pennsylvania, Connecticut and District of Columbia laws establishing one-year-residence requirements for eligibility to receive public assistance under programs of aid to dependent children.[1/] Because of this requirement each of the challenged statutes distinguishes between indigent adults -- and also indigent children -- whose

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1/ All of the named plaintiffs in the three cases, except Vera Barley, were applicants for Aid to Families with Dependent Children. Mrs. Barley was an applicant for Aid to the Permanently or Totally Disabled. The decree in the Pennsylvania case enjoins enforcement of the residence requirements in all categories of public assistance: Aid to Families with Dependent Children, Aid to the Blind, Aid to the Permanently or Totally Disabled, Old Age Assistance, and General Assistance (Pa. App. 156a). The decree in the Washington D.C. case enjoins enforcement of the requirement in all categories except Old Age Assistance (D.C. App. 89).

For convenience, we speak in the argument only of AFDC assistance.

situations are identical in every respect save prior residence. Those who satisfy the technical one-year-residence requirement are granted public assistance, while those who cannot meet the requirement are denied that essential aid. Abstractly stated, therefore, the question presented by all three cases is whether this discrimination on the basis of length of residence in a State violates the Fifth and Fourteenth Amendments.

But this abstract statement conceals the flesh, blood and heart of the true question. The facts of these cases make three points clear that frame -- and limit -- the constitutional issue:

First, the classification is in relation to the bare essentials of life, material and spiritual. Food, shelter, health, freedom from institutional confinement, and the preservation of families are at stake.

Second, those denied assistance under the length-of-residence classification have no less need for public assistance in order to obtain the bare essentials of life than those to whom assistance is available. From the standpoint of the stated purposes of public assistance laws, therefore, the two classifications are indistinguishable. Moreover, except for length of immediately prior residence, their situation is identical in every respect.

Such gross discrimination -- in relation to fundamental human interests -- between persons whose situation is identical in all relevant respects is alone enough to violate

the Equal Protection Clause and the Due Process Clause of the Fifth Amendment, unless it bears a rational relation to some other, substantial legislative problem. The elementary character of the needs served by these assistance programs distinguishes other State grants. Before turning to the question of justification, however, we should point out that in the present cases a much narrower decision under the Equal Protection and Due Process Clauses will suffice.

For their third basic element is that the ground of the hostile classification is solely the exercise of a basic human liberty -- freedom to leave an old and personally unsatisfactory environment in pursuit of preferred associations and opportunities for self-preservation or advancement. Freedom of geographic movement, within the Union, which is the underpinning of many rights, has long been recognized as an essential aspect of personal constitutional liberty. Thus, this is not merely a case of discrimination upon capricious but otherwise neutral grounds; this classification interferes with basic constitutional rights. Discrimination upon such grounds is obviously more objectionable from a constitutional standpoint than discrimination upon grounds that are neutral but irrelevant.

Even so, we need not claim that the classification is unconstitutional *per se*. Conscientious examination of the alleged justifications for the length-of-residence classification in public assistance shows that the hostile discrimination among persons otherwise identically situated,

solely on the basis of their exercise of liberty of movement, is not rationally related to any permissible State objective.

The case thus falls within the familiar principle that a classification which discriminates, without justification, against those who exercise a fundamental liberty violates the Equal Protection Clause and the Due Process Clause of the Fifth Amendment.

II

A decision invalidating the one-year-residence requirement would not involve overriding either section 402(b) of the Social Security Act, 42 U.S.C. 602(b), or an implied congressional judgment that the requirement satisfies constitutional standards.

First, section 402(b), properly understood, gives no affirmative sanction to one-year-residence requirements. It implies no congressional judgment upon their wisdom or constitutionality. The sole function of that provision is to raise a federal statutory barrier to residence requirements longer than one year. Section 402(b) leaves all questions concerning shorter residence requirements exactly where it found them -- in the hands of the State legislatures subject to normal constitutional requirements and judicial review.

Second, section 402(b) would not be controlling even if it could be read as giving statutory authorization for a one-year-residence requirement. In that event, section 402(b), like D.C. Code, §3-203(a), would be unconstitutional for the

same reasons as the State laws challenged herein. Congress has no power to abrogate or dilute the guarantees of Equal Protection and Due Process. To the extent that Congress must be taken to have expressed an implied judgment on questions of legislative fact in enacting D.C. Code, §3-203(a), our constitutional argument necessarily challenges the rationality of those conclusions, just as it does in the case of the State legislatures. But, since D.C. Code, §3-203(a) is not national legislation, it is worth observing that no such judgment lies behind the basic provisions of the Social Security Act, including section 402(b). The history of the Social Security Act shows no legislative investigation or findings. Nor can any judgment or even a congressional estimate be presumed. Since Congress did not establish any residence requirement, it had no occasion to face up to the underlying facts and resolve the issue one way or the other, as it does when it leaves the States no choice or enacts directly operative legislation.

Consequently, the Social Security Act does not relieve the Court of the duty to reach its own judgment upon whether the discrimination worked by the one-year-residence requirement is a rational response to a substantial evil.

ARGUMENT

I

THE ONE-YEAR-RESIDENCE REQUIREMENT VIOLATES THE EQUAL PROTECTION AND DUE PROCESS CLAUSES BY DISCRIMINATING, WITHOUT JUSTIFICATION, BETWEEN PERSONS IDENTICALLY SITUATED IN RELATION TO FUNDAMENTAL HUMAN NEEDS, SOLELY BECAUSE OF THE EXERCISE OF LIBERTY OF GEOGRAPHIC MIGRATION.

A. The one-year-residence requirement works gross discrimination, in relation to the very essentials of life, among persons whose situation is otherwise identical.

Appellants admit, as they must, that the Pennsylvania, District of Columbia, and Connecticut statutes differentiate, for the purpose of public assistance, between indigent adults -- and also indigent children -- who are identically situated in every respect except immediately prior length of residence within the jurisdiction.[2/] Those who meet the one-year-residence requirement are granted public assistance. Those who moved into the jurisdiction within the year

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2/ Both the Pennsylvania and District of Columbia statutes establish an unqualified one-year-residence requirement as a condition of eligibility for AFDC assistance. Pa. Stat. Ann. title 62, secs. 401, 432(6). D.C. Code, §3-203. The Connecticut statute is somewhat different because it disqualifies for one year only those residents who arrive in the State "without visible means of support for the immediate future." Conn. Gen. Stat. §17-2d. The difference seems irrelevant in terms of the argument presented in this Supplemental Brief. the additional grounds on which the Connecticut statute can be attacked, see the brief previously filed for the Appellee in Shapiro v. Thompson, No. 9, at pp. 24-28.

are denied assistance even though their situation is otherwise indistinguishable. Abstractly stated, therefore, the question presented is whether the discrimination based upon length of residence violates the Fifth and Fourteenth Amendments.

But this abstract phraseology omits the simple human facts that establish the cruelty of the discrimination and frame the real constitutional question.

1. The classification is made in relation to the bare essentials of life, material and spiritual. Public assistance is the last resource of those unable to support themselves, unable to find family, friends or private institutions able and willing to provide support, and unable to qualify for old-age insurance, unemployment compensation or any other form of social insurance. For those who cannot satisfy the one-year-residence rule, the classification means deprivation of shelter, food, clothing, and essential medical care. When public assistance is withheld, the entire quality of life -- sometimes even life itself -- is placed in jeopardy. The present cases are no worse than typical, but they dramatically illustrate the human consequences of the classification.

Juanita Smith had, when relief was denied, five children and was pregnant with a sixth. When she returned to her home in Pennsylvania, after living in Delaware, her father was employed and gave her financial assistance. When he was laid off, she became destitute. (Pa. App. 34a-36a.)

Public assistance was granted under a misapprehension but then terminated solely because of failure to satisfy the one-year-residence requirement. (Pa. App. 37a, 74a.) A private charity could provide no more than temporary assistance. (Pa. App. 44a-46a.) At the time suit was brought, almost no family resources were available to maintain Miss Smith and her five children. (Pa. App. 36a, 46a.) Although she "is pregnant and because of the numerous pregnancies she has developed terrible varicosities," she could not obtain the necessary medical care. (Pa. App. 49a.) Provision could be made for her five children but only by breaking up the family; the City Department of Public Welfare would place the children in child care centers overcrowded to 125 percent of capacity for periods of 90 days or two years while looking for foster homes. (Pa. App. 121a-125a.) The Director of Social Services for the Department testified (Pa. App. 123a) --

> I am saying to you that we would not in our department allow any child to go without shelter, and we would certainly take those children in, but I am saying that it is a very bad policy from the point of view of human value.

Were it not for the one-year-residence requirement, Juanita Smith and her children would have received public assistance.[3/] Thus, in her case the classification operated

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3/ The benefits sought and denied in these cases are penurious. In Pennsylvania, for example, by its own admission the State pays approximately 70 percent of its stated minimum requirements for health and decency, and 40 percent of the typical wage earner's expenditures. Pennsylvania Department of Public Welfare, Public Assistance Allowances Compared with the Cost of Living at a Minimum Standard of Health and Decency 1, 6 (1967). On the national pattern, see Report of the Advisory Council on Public Welfare, Having the Power, We Have the Duty 16-19 (1966).

in relation to shelter, subsistence, medical care, and the custody of her children. To children, it means the difference between overcrowded institutional upbringing -- or at best a foster home -- and the preservation of the family as a living unit. (Pa. App. 138a.)

Essentially the same cruel deprivations result from the length-of-residence classification in the other cases. Minnie Harrell had three children.[4/] Attempting to recover from major surgery for cancer, lack of public assistance required her to live with her brother and sister-in-law, their six, and her three children in a four-bedroom apartment. Because public assistance was withheld, she too was faced with the necessity of surrendering her children for institutional care. (D.C. App. 11-12.)

Gloria Jean Brown's three youngest children were denied assistance despite their mother's eligibility, two because they joined her in the District of Columbia some months after her arrival there and one because he was born within a year. Gloria Jean Brown was required to spend all but $11.50 of the monthly assistance payment for herself and one eligible child on rent and food stamps for the family of five. Since she could no longer obtain support from relatives, she was faced with the commitment of her infant children to Junior Village. (D.C. App. 36-39.)

4/ Minnie Harrell has died since the appeal was taken.

Clay Mae Legrant had two children at the time of suit, and was pregnant and arthritic. Living in a one-bedroom apartment in a condemned building, dependent for support on a sister (herself on public assistance) and a niece, the children were temporarily saved from commitment to Junior Village by the intervention of private charity. (D.C. App. 45-47.)

Vivian Thompson had one son and was five months pregnant with another child when, because her mother could no longer support her, she was required to seek separate housing. A private agency was supplying aid for the duration of this litigation but she was otherwise entirely without means of supporting either her son or herself. (Conn. App. 40a, 44a.)

In the case of Vera Barley the classification on the basis of length of residence means -- literally -- the difference between freedom and confinement.[5/] She moved to the District of Columbia in March 1941 and a month later she was committed to St. Elizabeth's Hospital for mental illness. She is now competent and doctors advise her release, but she cannot leave without public assistance because she is 67 years old and has no resources. Although she has been living in the District for 27 years and no other jurisdiction ackowledges any obligation for her

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5/ Miss Barley's claim, unlike that of the other named plaintiffs, was for Aid to Permanently or Totally Disabled, but the one-year-residence requirement is the same. For the additional grounds of attack upon the District's interpretation of the requirement in this case, see D.C.Brief for Appellees, p. 7, n. 11.

welfare or subsistence, the District classifies her as a resident for less than a year because of her hospitalization. Thus, as a direct result of the length-of-residence classification, she is confined to a mental institution from which she could otherwise go free. (D.C. App. 21-22.)

The facts illustrated by the cases of the seven women and nineteen children before the Court are repeated in the lives of others in the classes these plaintiffs represent. In light of the grim reality, it seems hardly more than sardonic irony for counsel to argue that such arbitrary classifications as that in Carrington v. Rash, 380 U.S. 89, are distinguishable on the ground that there the disqualification was "permanent" (Conn. Br. 13) while here "there is no permanent denial of welfare. If the person can get aid from their own family or aid from some charitable group for a one-year period, that person is eligible for welfare ...." (Conn. Br. 5.) One cannot so easily sweep out of sight the cruel and pervasive deprivations of a year of extreme economic poverty. Often other aid is not forthcoming for the year, as these cases illustrate. As lawyers, we are accustomed to dealing with discrimination in relation to relatively sophisticated rights, such as electoral disenfranchisement, freedom of religion and other civil liberties. The classification here is in relation to something simpler and more fundamental -- the means of preserving a minimal existence and a family unit free of institutional care.

The withholding of that basic assistance from a disfavored class manifestly erodes all other subtler and more sophisticated constitutional liberties.

We emphasize the point because it establishes one of the three important limitations upon the issue before the Court. These cases do not challenge all residence requirements upon eligibility for any form of State benefit. The public assistance at stake, including the AFDC grants, provides only the bare essentials of family existence without which other liberties are meaningless symbols.

2. The length of one's residence within a State is utterly irrelevant to the primary purpose of public assistance laws. Their central aim is to provide aid to the "needy and distressed . . . promptly and humanely . . . in such a way . . . as to encourage self-respect, self-dependency and the desire to be a good citizen and useful to society" (Pa. Stat. Ann. title 62, sec. 401). In the case of families with children, there is the further aim to "maintain and strengthen family life" (Social Security Act, 42 U.S.C. Sec. 601). The one-year-residence requirement defeats these purposes. As the facts of these cases demonstrate, the need for those classified as ineligible under the length-of-residence test is no less than the need of those granted assistance. The withholding of assistance is no less a blow to their self-respect, social usefulness, and family life than in the case of long term residents.

3. In all other respects, except for length of residence, the appellees' situation is also indistinguishable from that of persons who receive public assistance. The sole basis of classification is length of residence.

On the basis of these facts a number of lower courts have held that the classification plainly violates the Equal Protection Clause until it can be justified by its relation to some other permissible legislative objective. Finding none, they invalidated the length-of-residence requirement. Green v. Department of Public Welfare, 270 F. Supp. 173 (D. Del.); Thompson v. Shapiro, 270 F. Supp. 331, 336-338 (D. Conn.) appeal pending as No. 9; Smith v. Reynolds, 277 F. Supp. 65 (E.D. Pa.); appeal pending as No. 34; Harrell v. Tobriner, 279 F. Supp. 22 (D. D.C.) appeal pending as No. 33; Robertson v. Ott, F. Supp. (D. Mass.); cf. Ramos v. Health and Social Services Board, F. Supp. (E.D. Wisc.); Johnson v. Robinson, F. Supp. (N.D. Ill.).[6/]

There is ample support for these rulings in established constitutional principles, as we have shown in our original briefs in the individual cases. See Briefs for Appellees in Washington v. Harrell, pp. 30-40 and Reynolds v. Smith, pp. 19-33. Although a State has wide powers of classification, "it is equally true that such classification cannot be made arbitrarily." Gulf, C. & S. F.R. Co. v.

6/ Other cases in which temporary class-wide injunctions have been entered without opinion are cited in D.C. Brief for Appellees, p. 40.

Ellis, 165 U.S. 150, 155. See also McLaughlin v. Florida, 379 U.S. 184, 190-191, where additional authorities are collected. "The courts must reach and determine the question whether the classifications drawn in a statute are reasonable in light of its purpose . . . ." Carrington v. Rash, 380 U.S. 91, 93. "[T]he ultimate test of validity is not whether the classes differ but whether the differences between them are pertinent to the subject with respect to which the classification is made." Asbury Hospital v. Cass County, 326 U.S. 207, 214. Although the principle condemning arbitrary classification was first developed in relation to regulation and taxation, later decisions demonstrate that it is equally applicable to classifications made by legislation conferring advantages and opportunities. Commonwealth of Pennsylvania v. Board of Directors of City Trusts, 353 U.S. 230 (school for orphans); Evans v. Newton, 382 U.S. 296 (parks); Simkins v. Moses H. Cone Memorial Hospital, 323 F. 2d 959, cert. denied, 376 U.S. 938 (hospitals); Carrington v. Rash, 380 U.S. 95 (franchise); cf. Sherbert v. Verner, 374 U.S. 398 (unemployment benefits); see Reich, The New Property, 73 Yale L. J. 733, 779-782 (1964). And, as we show below, a length-of-residence classification of indigents living in a community, made for the purpose of granting or withholding the very essentials of life, is unreasonable because length of residence is not pertinent to the purposes of public assistance laws or any other permissible legislative objective. See pp. 22-42 below.

But this Court need not take such broad ground in order to affirm the judgments. The challenged classification not only relates to the fundamental essentials of life prerequisite to the enjoyment of personal liberties -- food, shelter, clothing, and preservation of the family. The sole ground of the discrimination is the exercise of liberty of geographic movement, which is itself a fundamental aspect of constitutional freedom. Thus, the basis of the hostile classification in these cases is not merely irrelevant and therefore capricious; it deters or punishes the exercise of another interest long affirmatively recognized in constitutional law.

B. <u>The one-year-residence requirement discriminates among persons whose situation is otherwise identical solely on the basis of the exercise of a constitutionally protected liberty.</u>

The inescapable effect of the one-year-residence requirement is to deter persons from moving into the State in order to establish a new residence with desired associations and opportunities or -- where the deterrence was insufficient -- to disadvantage them on account of their exercise of liberty of movement. This was the avowed purpose of the sponsors of the Connecticut statute (see Conn. Brief for Appellees pp. 14-16), and the other States will hardly deny that either deterrence or denial of the essentials of life is the inevitable consequence of the length-of-residence classification. In any event, the actual impact or "operative

effect" is open to this Court's examination. Reitman v. Mulkey, 387 U.S. 369, 373 and cases cited. And, whether it operates as a deterrent or not, the very terms of the one-year-residence rule put its punitive consequences beyond dispute.

Liberty to move and take up a new residence in a new environment or to return to one's home after migration was a key element in our development as a free people. It was for this that men risked the Atlantic passage and undertook the westward journey. Conversely, the opportunity to seek a change in environment has, in fact, been jealously preserved.

Our constitutional law also recognizes the basic human right to geographic mobility in pursuit of preferred associations and opportunities. The kernel of one aspect of the right was expressed in the Articles of Confederation, Article IV, which guaranteed "the people of each state free ingress and regress to and from any other State." The Articles' exception for paupers and vagabonds was omitted in Article IV, Section 2, of the Constitution, which carried the basic theme a step further by declaring that "the Citizens of each State shall be entitled to all the Privileges and Immunities of Citizens in the several States." In Corfield v. Coryell, 4 Wash. C. 371 (Cir. Ct. E.D. Pa.) Justice Washington confined the privileges and immunities so conferred to those "which are, in their nature, fundamental" but included as fundamental the "right of a citizen of one State to pass through, or to

reside in any other State, for purposes of trade, agriculture, professional pursuits, or otherwise." Crandall v. Nevada, 6 Wall. 35, struck down Nevada's effort to tax the movement of peoples across that bridge in the western journey, some justices relying upon the commerce clause and others on the very nature of the federal union. A prime purpose of the adoption of the privileges and immunities clause of the Fourteenth Amendment was to enable persons to move their residence where they please, within a State or to another State in the federal union "with the same rights as other citizens of that State." Slaughter-house Cases, 16 Wall 36, 80; cf. Twining v. New Jersey, 211 U.S. 78, 97. In Edwards v. California, 314 U.S. 160, the Court made it clear not only that there is constitutional freedom to move into a State in pursuit of preferred associations and opportunities, but also that the indigent have no less right of migration than the affluent. And in United States v. Guest, 383 U.S. 745 all members of the Court agreed that, regardless of the particular clause or concept to which it is traced, liberty to take up residence in whatever State one desires is an interest protected by the Constitution. We need show no more here because discrimination against the exercise of such an interest -- unless justified by another objective of policy -- would deny Equal Protection. See pp. 22-42 below.

The liberty of geographic movement involved in the present cases is much more than travel, although travel is

involved. It is freedom to leave an old and personally unsatisfactory environment for new opportunities with a different home, different government, different economic or cultural opportunities, and different associations. In a nation founded by those who moved in search for political and religious liberty and which grew great through westward migration, it is hardly necessary to argue that change of residence is the underpinning of other basic freedoms -- personal, social, economic and political -- many of which enjoy constitutional stature.

Three of the present cases illustrate the point concretely. Juanita Smith moved from Delaware to Pennsylvania to rejoin her family (i.e. freedom of association) (Pa. App. 36), to secure better education and job opportunities (i.e. personal and economic self-advancement) (Pa. App. 35-36), and to escape the vestiges of racial segregation (political and social equality) (Pa. App. 36). Freedom of association in the simple human sense of rejoining the family was the basic reason for the return of Gloria Jean Brown to Washington. She had been brought there as an infant, attended school there, and returned there to join her eldest child, her own father, her grandmother, her four sisters and two brothers. The two of the three minor children for whom she sues in this case had been left temporarily in Arkansas until she reestablished herself. She brought them to Washington in order to reunite the family. Minnie Harrell, who has died since the appeal was taken, moved

to Washington "so that I might be able to make a better life for myself and my children" and because "my children and I need to be together with my family very much." More specifically, she faced hospitalization and, if she moved to Washington, her children could be cared for by her brother and sister-in-law (D.C. App. 7).[7/] If it be supposed that freedom of association is too pretentious a description for family relationships, we should recall that the integrity of family life "is something so fundamental that it has been found to draw to its protection the principles of more than one explicitly granted Constitutional right." Justice Harlan in Poe v. Ullman, 367 U.S. 497, 551-552.

In sum, discrimination in affording public assistance to indigents solely on the basis of length of residence seriously impinges upon the recognized constitutional liberty of moving to a new home in pursuit of preferred opportunities or associations.

It can be strongly argued that this interference with liberty of movement is enough to render the one-year-residence requirement unconstitutional. See Conn. Brief for Appellees, pp. 10-23. But here again the Court need not go so far. Nor is it necessary to determine whether the guaranty of freedom of movement to a new residence rests upon the privileges and immunities clause,[8/] or is secured by the

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7/ Quotations are from the plaintiff's Affidavit in Support of Motion for Preliminary Injunction, which is part of the original record in this Court.

8/ Edwards v. California, 314 U.S. 160, 177, 181 (concurring opinions)

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8/ Edwards v. California, 314 U.S. 160, 177, 181 (concurring opinions).

commerce clause[9] or the inherent character of the federal union,[10] or is an aspect of personal liberty protected by the Due Process Clauses of the Fifth and Fourteenth Amendments.[11] Decision here can be solidly rested upon the Equal Protection Clause in the case of the States and the similar guarantee against arbitrary federal discrimination under the Fifth Amendment. From this point of view, the central importance of the heavy deprivations to which the one-year-residence requirement subjects those who move into a State is that it demonstrates that the resulting classification is not merely arbitrary and capricious because it discriminates upon irrelevant grounds among those who are otherwise identically situated, in relation to the most fundamental human needs, but is itself affirmatively harmful because it impinges upon the exercise of what all agree is a constitutionally-recognized aspect of liberty. Discrimination upon such ground is obviously more objectionable than discrimination upon grounds that are neutral but irrelevant.

9/ Edwards v. California, 314 U.S. 160; Crandall v. Nevada, 6 Wall. 35, 49 (concurring opinions).

10/ Crandall v. Nevada, 6 Wall. 35.

11/ Chafee, Three Human Rights in the Constitution of 1787, 192-193 (1956), quoted by Justice Harlan in United States v. Guest, 383 U.S. 745, 769, 770.

Even so, we need not claim that the classification is unconstitutional *per se*. In these cases, conscientious examination of the alleged justifications shows that the hostile discrimination among persons otherwise identically situated, on the basis of their exercise of liberty of movement, is not rationally related to any permissible State objective.

C. The one-year-residence requirement bears no substantial relation to any permissible State objective.

In the original briefs and oral argument of these cases considerable attention was directed to the standard of justification required to validate the length-of-residence classification. Because the classification (1) operates in relation to the bare essentials of life necessary to the enjoyment of other personal liberties and (2) is based solely upon the exercise of a constitutionally protected freedom, we have argued that the discrimination is to be judged not by the tolerant attitude applied to economic regulation but the stricter tests for invasion of human rights.

See, e.g., McLaughlin v. Florida, 379 U.S. 184, 190-192; Loving v. Virginia, 388 U.S. 1, 8; Carrington v. Rash, 380 U.S. 89,96 ; Harper v. Board of Elections, 383 U.S. 663, 669-670; cf. Griswold v. Connecticut, 381 U.S. 479, 497, 501 (concurring opinions); Bates v. Little Rock, 361 U.S. 516, 525.

But while we believe that to be the proper standard, our case does not depend upon it. No more is required than that the Court be willing to look behind outmoded habits and prejudice against the poor, especially the poor in other localities, in order to ascertain whether there is any substance at all to the alleged relationship between the length-of-residence requirement and the various objectives which it is alleged to serve. For when reason is substituted for prejudice and empty assumptions, it becomes apparent that there is no rational relationship between the requirement and any permissible objective of legislative policy.

Careful judicial scrutiny of alleged relationships between an apparently invidious classification and permissible objectives of State policy has never been confined to instances of racial discrimination or special categories of cases. See, e.g., Skinner v. Oklahoma, 316 U.S. 535; Carrington v. Rash, 380 U.S. 89; Rinaldi v. Yeager, 384 U.S. 305; Levy v. Louisiana, 391 U.S. 68 . Care in examining the assigned justification for the egregious discrimination involved in these cases is well warranted by its human consequences,

by its relation to ancient local prejudices inconsistent with current reality, and by its impact upon a basic constitutional right. It is the more appropriate because the discrimination bears upon a class with scant influence upon the political process,[12] both because of its poverty and because many of its members come from other States.[13] But once the Court examines the facts there is no need to apply a heavier burden of justification or for the Court to substitute a judicial opinion for political judgment upon an issue where there is room for differing views. For length-of-residence classifications in granting public assistance necessary for the bare essentials of life are seen to serve no legitimate object of State policy when judged by any rational test.

Since each item in appellants' grab bag of justification is analyzed in detail in the original briefs, we merely summarize the points essential to the argument.

12/ United States v. Carolene Products Co., 304 U.S. 144, 152-153, n. 4.

13/ South Carolina State Highway Department v. Barnwell Brothers, 303 U.S. 177, 184-185, n. 2.

1. To discourage the poor from entering the jurisdiction.

The actual reason for the one-year-residence rule is to discourage indigent persons from moving into the State. The purpose was squarely avowed by the sponsor of the requirement in the Connecticut legislation.

> If we pass this [one year residency] Bill, the word could get around that we are not an easy state .... As responsible legislators we cannot ... continue to allow unlimited migration into the State, on the basis of offering instant money and permanent income to all who can make their way [here], regardless of their ability to contribute to the economy. [Connecticut General Assembly 1965, House of Representatives Proceedings, Vol. II, Part 7, pp. 194-95 (Connecticut State Library); Appendix to Plaintiff's Pretrial Memorandum in District Court, pp. 78-80.]

Historical materials further demonstrating the purpose are contained in our original briefs. See Conn. Brief for Appellees, p. 16 ; D.C. Brief for Appellees, p. 45; Pa. Brief for Appellees, pp. 21-22. Indeed, this objective is offered as justification by the District of Columbia (Br. 9), Connecticut (Br. 9-10), and by Judge Clairie, dissenting in the Connecticut case, Conn. App. 31a-35a; 270 F. Supp. 331, 339-41.

The short answer is that deterring the immigration of indigents is not a permissible object of State policy. The point was squarely determined by Edwards v. California, 314 U.S. 160. In a concurring opinion Mr. Justice Douglas declared that --

> to allow such an exception [curtailing the right of free movement of those who are poor or destitute] to be engrafted on the rights

> of national citizenship would be to contravene every conception of national unity. It would also introduce a caste system utterly incompatible with the spirit of our system of government.

And Justice Jackson observed that --

> Any measure which would divide our citizenry on the basis of property into one class free to move from state to state and another class that is poverty-bound to the place that it has suffered misfortune is not only at war with the habit and custom by which our country has expanded, but is also a short-sighted blow at the security of property itself.

Appellants' effort to distinguish Edwards on the ground that the California statute raised a direct bar against movement is ineffective. The penalty was aimed at those who assisted the immigration of an indigent person and thus operated only to discourage, not to bar, the indigents themselves. In any event, the form of the deterrence is immaterial. Keeping indigents out of a State is simply not a permissible objective of State policy and a classification keyed solely to that objective violates the Equal Protection Clause. Truax v. Raich, 239 U.S. 33, 42.[14/]

14/ It may conceivably be suggested that, since Edwards v. California, supra, rests upon the commerce clause or the inherent nature of the national government, Congress has power to authorize the States to erect barriers to interstate migration and has exercised that power in section 402 of the Social Security Act. There are two answers: First, section 402 does not give affirmative congressional sanction for State one-year-residence requirements; it merely fails to prohibit them. See pp. 44-50 below. Second, Congress has no power arbitrarily to authorize State barriers to geographic migration without some justification other than the desire to prevent it, because such migration is an aspect of a liberty protected by the Fifth Amendment. Chafee, Three Human Rights in the Constitution of 1787, 192-193 (1956) quoted by Justice Harlan in United States v. Guest, 383 U.S. 745, 769, 770. A different question would be presented if either Congress or a State were to enact a carefully articulated program for dealing with the hardships of rural to urban migration or a similar problem. Here, we deal only with naked protectionism.

2. Investment in the Community

Appellees' argument that discrimination on the basis of length of residence is justified by a policy of limiting benefits to those who have an "investment" in the community or have made some "contribution" to it, is nothing more than a fictitious restatement of the ancient notion that each local community should care for its own and paupers should either remain in their place of settlement or go without relief.

The invalidity of that concept in a modern industrial nation characterized by economic unity and personal mobility is established by Edwards v. California, 314 U.S. 426. The converse of settlement is alienage. There is no room for alienage among free citizens of the federal union.

Words like "investment" and "contribution to the community" add only verbiage without foundation in fact. Public assistance programs are not geared to investment or contribution to the welfare of a State. They are not a form of insurance. Assistance is no less available to those who, through misfortune, have been charges upon the community throughout their lives than to those who have been normally productive. Nor is there a fragment of evidence to support the view that a year's residence has any tendency to measure relative contribution to a community. Fully 40 percent of the applicants rejected for failure to satisfy the one-year-residence requirement had had lengthy prior

residence in the community that denied them assistance.[15/] Their earlier contribution, before moving away, may well have equalled or exceeded the investment of persons who remained.

Perhaps the chimerical nature of the entire argument is best shown by the fact that in both the District of Columbia and Pennsylvania the one-year-residence requirement is applied to infants and other dependent children under AFDC programs even when their mother, by virtue of one year's residence, has made sufficient "contribution" to be entitled to aid. Surely, it will not be seriously suggested that the eight months old infant Shawn Brown made less "contribution" than other infants to the District of Columbia because he was born within a year of his mother's return to her home and family, or that when he becomes a year old and therefore eligible it will be because of his contribution to the community during his first year of life.

3. To deter immigration by persons seeking more liberal assistance

The most sophisticated version of the argument that a State may adopt a tough welfare policy towards indigents in order to discourage their movement into the jurisdiction asserts as its justification the desire to keep the State's program of assistance from attracting indigents from States with a lower level of available benefits.

The rationalization inevitably evokes skepticism. The States with one-year-residence requirements apply them to all indigents, even those who come from States where the

15/ Pa. App. 84a-85a, 129a.

level of benefits is higher than their own. States which have entered into reciprocal aid agreements waive the one-year-residence requirements even for persons coming from States with lower levels of benefits. Indigents are disqualified under the one-year-residence requirement for reasons utterly unrelated to movement in pursuit of higher benefits. Vera M. Barley was declared ineligible because she was committed to St. Elizabeth's within a year after coming to the District; Shawn Brown because he was born within a year of his mother's return to the District, even though she was entitled to aid. None of these practices is consistent with the contention that the aim of the classification is to keep the public assistance program from serving as a magnet.

Assuming that a State, regardless of the real motive, is entitled to the benefit of any rationalization counsel can supply, the argument nevertheless fails for three independently sufficient reasons:

First, it is inconsistent with Edwards v. California, 314 U.S. 160. The power of a State to shut indigent migrants off from any advantages of its program of public assistance is no greater than its power to deny them access to other natural, social or political advantages of moving to the new residence. If New York may not regulate low-priced Vermont milk attracted to the New York market by her price regulation (Baldwin v. Seelig, 294 U.S. 511), then

surely she may not exclude from her schools children of parents attracted by her superior system of public education. Similarly, Connecticut should not be permitted to discriminate against former residents of Massachusetts attracted by her program of public assistance.

Second, there is not the slightest bit of evidence to support the assertion that migrants are attracted from one State into another by differences in the level of public assistance. The argument of the briefs filed by appellants and amici rests entirely upon assertion. They cite no factual material to sustain it. Through constant repetition, the argument has gained a measure of popular and political credence, but more than widespread prejudice against a weak and unfortunate class is required to support the rationality of a discrimination, based merely upon the exercise of a basic human liberty, which operates to withhold the bare essentials of a decent existence. This is especially true where, as here, all the available data is directly contrary to the unsupported assumption.

The studies showing that welfare applicants do not migrate in search of higher benefits are discussed in the opinions below and in our original briefs, together with the testimony of State officials. See Pa. App. 84a-85a, 94a-95a, 98a (testimony of welfare officials); id. at 150a-151a, 154a, 277 F. Supp. at 66, 67-68 (opinion of District Court); D.C. Brief for Appellees, 50-52, n. 70 (reports of federal and State agencies, and of scholarly

studies); D.C. App. 67-68, 279 F. Supp. at 29 (opinion of district court); Conn. Br. for Appellees, 8, 14-15, n.15; Brief Amici Curiae of the Center on Social Welfare Policy and Law, et al. 22-30.

The evidence is dramatically confirmed by the facts of the instant cases. Juanita Smith's parents and their families are long-time residents, many of them natives, of Pennsylvania. She was born in an Army Hospital outside the State (Pa. App. 30a), but came to Pennsylvania at the age of one month, and remained until 1959 (Id. at 22a, 30a), when she went to Delaware with William Paynter, who is the father of her three younger children. In December, 1966, her father went to Delaware and urged the family to move to Philadelphia, offering to help them until William Paynter found work (id. at 34a). He paid the rent and utilities bills for several months, but Paynter was unable to find a job and returned to Delaware. When Miss Smith's father was himself laid off from work, his obligations to his own family (a wife and six children) left Miss Smith's children dependent. A month later, pregnant and sick, she sought assistance (id. at 34a, 36a). These facts are utterly inconsistent with any suggestion that

Miss Smith went to Pennsylvania because of the lure of public assistance.[16/]

Jose Foster lived in Pennsylvania from 1953 to 1965. In 1965 (though receiving public assistance) she and her children went to South Carolina to care for her ailing grandparents. She remained there until her grandfather was hospitalized and her grandmother was taken in with another relative. She then returned to Philadelphia (Pa. App. 141-144a; Br. for Appellees, p. 5). Minnie Harrell and her family had been living in New York, where she received AFDC after her separation from her husband. When she fell seriously ill with cancer, she moved to the District of Columbia, the home of her brother and sister-in-law, because they could care for her children in the event she again required hospitalization (D.C. App. 7). Vera Barley has been in the District of Columbia for 27 years. She is deemed ineligible for assistance only because she was hospitalized within a year of her coming back to the District in 1941, where she and her family had lived for a year-and-one-half in 1935 and 1936 (id. at 21).

16/ Despite these uncontradicted facts, stipulated by counsel (Pa. App. 22a) and found by the district court (id. at 137a), counsel has advised this Court that Juanita Smith first came to Pennsylvania in December 1966 (Pa. Br. 6). The inadvertent error seems characteristic of the "wishful thinking," conditioned by prejudice and hostility, which conceals the facts in this area. Compare the assertion by counsel for Connecticut that "appellee's claim of unavailability to work because of the age of her children . . . failed to satisfy the appellant" (Conn. Br. 5). It was expressly stipulated below that appellee was "unable" to work or seek work or work-training "because of her pregnancy and her responsibilities to her son" (Conn. App. 41a), and her ineligibility under the residency requirement (id. at 12a).

we need not recite the history of the other plaintiffs. In each instance the facts demonstrate that they had ample personal reasons for moving without the slightest intention of obtaining more liberal public assistance in a new abode. In two instances, plaintiffs moved despite a reduction of benefits: Minnie Harrell from New York to the District of Columbia and Jose Foster from Pennsylvania to South Carolina (whence she later returned).

These concrete cases might be legally unimportant if they were only exceptions to a soundly based classification. Their significance here is that they concretely illustrate the emptiness of the invidious presupposition that new residents applying for welfare must have come to a State attracted by its public assistance. The motivations and relationships disclosed by these records are confirmed by the general reports already mentioned, including a study introduced in evidence in the Pennsylvania litigation (and accepted by State officials and by counse, Pa. App. 84a-85a, 129a), disclosing that 40 percent of the rejected applicants had previously lived in the State, that 60 percent had relatives there, and that 64 percent came to find work (37 percent having jobs when they came). Only 10 percent were recipients of assistance in the State from which they came. One-half of the applicants lived in Pennsylvania for six months prior to seeking assistance (Pa. App. 85a). See similar facts relating to other States in the Brief amicus of the Center of Social Welfare Policy and Law, 25-30.

We do not stress these facts for the purpose of persuading the Court to resolve in our favor a controverted issue upon which there is conflicting data. Such a choice is for the policy-making branch. Here, all the evidence -- factual studies, expert opinion, and evidence of record -- is on one side; on the other side is only prejudice and persistent assertion. The very purpose of the Equal Protection Clause is to resolve such conflicts on the side of reason. Something more than persistent prejudice, traceable to reluctance to support newcomers, is required to justify a classification that discriminates against the exercise of a basic human liberty, in relation to the availability of the bare essentials of existence.[17/]

17/ The difficulty of inducing legislatures to examine the facts in the face of persistent prejudice was explained to the district court in the Pennsylvania case (Pa. App. 96a-97a):

BY JUDGE KALODNER:

Q. In view of the experience you have just recited to us, having been with the Department of Public Assistance a number of years, the last eight or nine years in the important office you occupy [Director of Bureau of Policies and Standards], has there been any representation made to the Legislature with reference to the elimination of the one-year-residence requirement by the Department of Public Assistance?

A. Yes, there has. We have proposed a change in the residence requirement on a number of times but the latest one is a proposal of one out of five years.

Q. Is what?

A. The person have a one year's residence out of five years.

Q. And what happened to that proposal?

A. It was turned down by the Legislature. It is being reintroduced this year, I understand.

BY JUDGE SHERIDAN

Q. Why hasn't the Department proposed the complete elimination of all residence requirements instead of coming to one of five? There must be a reason.

A. There is a lot of feeling I think about assistance to person who haven't been residents of Pennsylvania and a fear that it will greatly increase costs, which you can't counteract by estimates.

Q. How would it increase cost? I think your testimony has been the opposite, hasn't it?

A. Yes, I know, but I am talking about the public opinion.

Q. My question is directed to the Department not the public.

A. Well, this is why the Department doesn't get its proposals enacted by the Legislature, because there is a pool of opinion that the residence requirements result in an influx of people into the Commonwealth.

Third, the argument that the State is seeking to prevent its funds for public assistance from being dissipated by the attraction they offer to migrants from States with a lower level of benefits would not support the one-year-residence requirement, even if it were not otherwise invalid, because the discrimination is manifestly broader and more restrictive than is required to meet the asserted evil. The supposed danger cannot possibly excuse applying a one-year-residence to those who come from States with equal or lower benefit levels. The problem if genuine, could be met in the case of migrants from States with a lower level of benefits by limiting the assistance to the levels of the States from which the migrants came. Thus, even if it be assumed arguendo that avoiding the attention of migrants seeking public assistance is a real and permissible objective of State policy, the flat one-year-residence rule is unconstitutional because less restrictive measures are patently sufficient to satisfy the need. Aptheker v. Secretary of State, 378 U.S. 500, 508; NAACP v. Alabama, 377 U.S. 288, 307; Shelton v. Tucker, 364 U.S. 479, 488.[18/]

18/ It is apparent that the arguments made in the text apply equally to the Connecticut statute, which is somewhat narrower in scope but even more unmistakenly aimed at discouraging or penalizing the entry of those to whom it applies. Moreover, the seeming narrowness is wholly inadequate to render the statute as apt assertion of a desire to reach those entering the State to seek assistance, even if such an aim were permissible. The Regulations are set out in Conn. App. 9a-10a, and as the facts of this case plainly show, disqualify those conceded to have entered for bona fide reasons. Specifically, the distinction between those entering with a promise of a job and those entering with a credible expectation of finding work or of being supported by relatives renders the Connecticut statute far too broad to carry out the postulated purpose.

4. To provide an objective test of residence

It is common ground that a State may condition public assistance on "residence," in the sense that the beneficiary is living there with no intention of presently moving.[19/] The reason, in our view, is that the AFDC and other forms of assistance involved in these cases are geared to the provision of a stable home, the opportunity to live a useful life in the community, and the preservation of the family unit. Grants are for biweekly or monthly periods. The type of public assistance appropriate for one passing through a locality or intending prompt departure might well be very different.

Appellants argue that since the present forms of assistance may be confined to residents, the one-year-residence rule is justified as a workable rule of thumb for determining who is a resident. The courts below uniformly rejected the argument. See Pa. App. 153a-154a, D.C. App. 70, Conn. App. 28a.

The rulings below upon this point are plainly correct. The one-year-residence rule would be a valid test of residence only if experience showed that there was a rational relation-

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19/ Cf. Federal Handbook of Public Assistance Administration, Pt. IV, §§3620, 3651; Pa. Pub. Assistance Manual, sec. 3151.11, The HEW regulations provide a simple test of residence requiring only presence without intention of presently removing. See D.C. Brief for Appellees, p. 34, n. 41. If a State were to discriminate against any resident within this definition by requiring presence for a period as a test of residence under the judgments in these cases, the Department would presumably disapprove that plan.

ship between the fact observed and the conclusion to be inferred -- between the fact that an applicant has not been in the State a full year and the conclusion that he is not presently living there with no intention to go away. Both logic and experience belie the inference. Certainly, one who has lived in a locality less than a year can be living there presently. And, the fact that one changed residence less than a year ago is no evidence that he intends to leave his current home. (Pa. App. 85a.) Even as a rebuttable presumption the one-year-residence rule would be too arbitrary a test of current residence to withstand constitutional examination. Tot v. United States, 319 U.S. 463.

Here again, the record furnishes dramatic examples of the fallacy of appellants' assertions. Gloria Jean Brown was brought to Washington when she was an infant. She attended school there. Later, she left her first child there with her own father and went to Ft. Smith, Arkansas, with her mother. In February 1966, when her mother moved to Oklahoma in search of employment, Gloria Jean Brown went back to Washington. She considered Washington her home. She had lived there many years. Her father, her son, her grandmother, and her four sisters and two brothers were still living there. In August 1966, having reestablished herself, she sent for the two children whom she had left temporarily in Arkansas with their grandmother. In view of her background, family ties and arrangement for her children, no one could doubt the bona fides of her residence yet she was

denied assistance until February 1967 because she had not been living in the District for the twelve preceeding months. Even when she was granted assistance for herself and the oldest child, the next two were ruled ineligible because they had been residents for only six months. An infant born in Washington in November 1966 was also ruled ineligible because Gloria Jean Brown had not been a resident for a year prior to its birth. Manifestly, all three minor children had enduring ties to the District of Columbia and were residents by any rational test. (D.C. App. 35-36, Affidavit of Gloria Jean Brown in Support of Motion for Temporary Injunction filed as part of the original record in this Court.)

The case of Vera M. Barley further illustrates the arbitrariness of the one-year-residence rule as a test of actual residence. She had actually lived in the District for 27 years. The rule denied her public assistance solely because she had the misfortune to suffer a mental illness that required her commitment to St. Elizabeth's Hospital before she had been a resident for a year. No other jurisdiction acknowledges a relationship to her, and she has no place outside the District in which to live. Her planned arrangements to live in the District could not be pursued because public assistance was withheld. As a result, she would have been kept indefinitely in St. Elizabeth's but for the injunction below. (D.C. App. 21-22.)

Appellants' claim that so arbitrary a classification serves administrative convenience is also implausible. There are many familiar and more accurate criteria of actual residence than the one year rule. The suggestion that individual application would be a hardship is scarcely credible against the background of the actual administration of public assistance. In every case in which public assistance is sought, an exhaustive individualized determination is made of each relevant aspect of an applicant's life -- except (we are told) his residence. The touchstone of the verification system by which need is established is individualized inquiry of a most painstaking and searching nature. In the process of that investigation all of the facts bearing on residence can readily be brought out, and often are, whether residence is in issue or not. In light of these realities of the public assistance system, abstract references to the "complex and difficult" questions involved in determining residence (D.C. Br. for appellants, p. 10; cf. Judge Holtzoff, dissenting at D.C. App. 81) seem rather empty. Such a "remote administrative benefit" will not justify a discriminatory classification penalizing the exercise of a basic constitutional right. Harman v. Forssenius, 380 U.S. 528, 542; Carrington v. Rash, 380 U.S. 89, 96.

5. To prevent the fraudulent receipt of benefits from two States

Pennsylvania suggests that the one-year-residence requirement provides an "insulation period" necessary to prevent one recently moving from one State to another from obtaining benefits from both (Pa. Br. for appellants, 15). This "justification" is adequately answered in the Pennsylvania appellees' brief at pp. 29-30. See, also, Sherbert v. Verner, 374 U.S. 398, 407.

We mention the argument here only because it shows how often the simple demands of decency and rationality are answered by defamation of the poor and dependent. The general fraud problem has consistently been shown to be minimal (see HEW study cited id. at 29). Although there is absolutely no showing that the particular species of fraud suggested here has ever been practiced, appellants in the Pennsylvania case wish to tell the seven women now at the bar of this Court, and the class they represent, that their compelling claims must be postponed for up to a year in order to filter out other umproved claims of an anonymous group of unknown size supposed to be prone to file duplicate applications.

6. Facilitation of Budgeting[20/]

Appellants' brief and Judge Kalodner's dissenting opinion in the Pennsylvania case argue that the one-year-residence requirement eases the problem of budgeting appropriations because it eliminates the need for predicting the number of persons entitled to relief who will move into the Commonwealth during the year. (Pa. Brief for Appellants p. 13-14; Pa. App. 163a-165a.) The speculation is disapproved by the testimony of the Director of the Bureau of Assistance Policies and Standards that elimination of the residence requirement would not complicate budgeting (Pa. App. 95). It also contains obvious fallacies. Many States, including Pennsylvania until 1959, use two-year-budgets; in such cases the one-year-residence requirement could not eliminate any problem of prediction. Pennsylvania, like other States, waives the residence requirement under reciprocal agreements; reciprocity does not lessen any problem of prediction. In truth, any variation in the number of persons moving into a State during the year can have no more than trifling impact upon the need for public assistance in view of other larger variables affecting the state of the national and local economy. The total number of indigents affected by the residence requirement is no more than one or two percent of the total number who receive assistance. Changes in immigration into a State of the order of 10 or 20 percent could, therefore, affect the number receiving aid by only two-tenths of one percent.

20/ See also Pa. Brief for Appellees, pp. 26-29.

7. Protection of the fisc

There is even less merit to the suggestion that the length-of-residence classification can be justified as a means of limiting discretionary expenditures. The desire to save money provides no rational basis for classification. It could equally well be cited as justification for withholding payments from a political or religious minority, or from those who exercise freedom of speech, or from any other group however capriciously defined. Thus, the argument based upon protection of the fisc is nothing more than a claim that hostile discrimination is permissible in the granting of benefits.[21/]

That contention, as we now show, is contrary to settled constitutional principles.

D. A classification which, without justification, penalizes those who exercise constitutional liberties by discriminating in the provision of public assistance violates the Equal Protection and Due Process Clauses.

It is a well settled principle that a State cannot constitutionally condition the grant of an exemption, privilege, or other benefit upon the surrender of a constitutionally protected interest. Speiser v. Randall, 357 U.S. 513,

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21/ See also Pa. Brief for Appellees, pp. 24-25.

518-519; Sherbert v. Verner, 374 U.S. 398, 403-406.[22/] Although the cases cited refer to other substantive constitutional guarantees, the same principle necessarily condemns as arbitrary, capricious, and therefore a violation of Equal Protection, a classification which discriminates, without other justification, solely on the basis of the exercise of such a constitutional liberty.

This is enough to invalidate the one-year-residence requirement in the Pennsylvania and Connecticut statutes. Both impose a hostile classification among persons otherwise identically situated solely upon their exercise of the constitutionally protected liberty of moving one's residence to another State in pursuit of preferred opportunities and associations. Both impose the discrimination in relation to provision of the bare necessities of life. The classification serves only prejudice against poor migrants; it has no rational relation to any permissible objective of State policy. Consequently, both statutes violate the Equal Protection Clause of the Fourteenth Amendment.

In the case of the District of Columbia, the Fifth Amendment's guaranty of Due Process bars congressional establishment of invidious classifications based upon group prejudice without reasoned justification. Bolling v. Sharpe, 347 U.S. 497; Schneider v. Rusk, 377 U.S. 163. The District of Columbia residence requirement is therefore as invalid as those of the States.

22/ Additional authorities are collected in Sherbert v. Verner, supra, and in D.C. Brief for Appellees, p. 55.

II

SECTION 402(b) OF THE SOCIAL SECURITY ACT

IS NOT CONTROLLING.

A. Section 402(b) gives no congressional sanction to one-year-residence requirements for public assistance.

Section 402(b) of the Social Security Act, 42 U.S.C. 602(b) provides:[23/]

> The Administrator [now the Secretary of Health, Education and Welfare] shall approve any plan which fulfills the conditions specified in subsection(a), except that he shall not approve any plan which imposes as a condition of eligibility for aid to dependent children, a residence requirement which denies aid with respect to any child residing in the State (1) who has resided in the State for one year immediately preceding the application for such aid, or (2) who was born within one year immediately preceding the application, if the parent or other relative with whom the child is living has resided in the State for one year immediately preceding the birth.

Our attack upon the constitutionality of State one-year-residence requirements for AFDC assistance does not question the constitutionality of section 402(b) nor does that provision bear upon the constitutional argument. The central thrust of section 402(b) is to invalidate the once-common State laws limiting assistance to very long term residents. In the case of AFDC grants, Congress limited the federal

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23/ Somewhat different partial restrictions upon durational residence requirements are applicable to Old Age Assistance, Aid to the Blind, and Aid to the Permanently and Totally Disabled. See 42 U.S.C. §§302(b), 1202(b), 1352(b), 1382(b).

statutory interdiction to plans establishing residence requirements in excess of one year. The most that can fairly be inferred with respect to shorter requirements is that Congress reached the conclusion that requiring residence for one year or less was not so objectionable that the federal statute should prohibit it. It cannot fairly be said that Congress gave affirmative approval to the one-year-residence requirement from the standpoint of either policy or constitutional law. Rather, it left the matter for other methods of resolution -- to the States in the first instance but subject, like other State legislation, to constitutional review.

The legislative history proves the correctness of this interpretation. One year before the Social Security Act was enacted, 42 of the 47 States which had programs for aid to dependent children -- all but five -- required residence for more than the one year minimum permitted by section 402. Twenty-one States required residence for a stated period in a particular county or town. Thirteen States required two years residence within the State; six required three years residence; one, four years; and one, five years. See Social Security Board, Social Security in America, 235-36 (1937) (published for the President's Committee on Economic Security).

There was a similar problem with respect to old age assistance. Of the 27 States with old age pension laws,

eight had a 10 years-residence requirement; 16 required 15 years; two required 20 years; and Arizona required residence for 35 years. 79 Cong. Rec. 5602 (1935).

The entire purpose of section 402 was to insure that these unjust eligibility requirements would not be carried into State plans financed under the Social Security Act. Representative Doughton, in offering the Social Security bill on behalf of the House Ways and Means Committee, said (79 Cong. Rec. 5470 (1935)):

> These provisions are designed to liberalize the State laws. With the Federal Government bearing 50 percent of the cost, it is entirely appropriate that the States be required to modify their present long-residence requirements. These were perhaps necessary safeguards so long as the pensions were paid wholly from State funds, but they frequently cause considerable hardship and are unnecessary and unwise with 50-percent Federal support.

Both House and Senate Committee reports stated (S. Rep. No. 627, 74th Cong., 1st Sess. 35 (1935); H. Rep. No. 615, 74th Cong., 1st Sess., 24 (1935)):

> (b) Liberality of residence requirement: No residence requirement shall be imposed which results in the denial of aid with respect to an otherwise eligible child, if the child was born in the State within the year, or has resided in the State for at least a year immediately preceding the application for aid. The State may be more lenient than this, if it wishes. 24/

Thus, Congress did not face the question whether any minimum period of residence should be required. And, since

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24/ See, also, 79 Cong. Rec. 9268, 9285 (1935) and materials cited D.C. Brief for Appellees, pp. 56-57, n. 77.

it did not face that question, Congress had no occasion to make any determination whatever as to whether a one-year-residence requirement is a proper response to problems of State concern and otherwise satisfies the requirements of the federal Constitution.

No inference of affirmative congressional sanction can be drawn from the recital that the Secretary "shall approve any plan which fulfills the conditions specified in subsection(a)." The word "shall," despite its literal generality, will not bear the weight of a conclusion disproved by the legislative history. Certainly, the language is not a command to approve a plan which is patently unconstitutional, merely because it literally satisfies the only conditions stated in subsection(a). Cf. Simkins v. Moses H. Cone Memorial Hospital, 323 F. 2d 959 (4th Cir.), cert. denied 376 U.S. 938. Congress cannot be taken to have commanded the Secretary to approve a plan which is racially discriminatory or which introduces an utterly capricious classification such as conditioning eligibility upon the month of the year in which a child was born. For the same reason, the Secretary acted properly when he, in fact, disapproved State exclusion of Indians, and of

mothers with illegitimate children.[25/] At most, section 402(b) commands the Secretary not to add to the statutory conditions established by Congress administrative requirements of his own creation not related to the purposes of the statute or which Congress actually rejected. Such a mandate cannot be stretched into a congressional finding and judgment that no plan which satisfies those conditions is subject to constitutional attack, or that facts exist which justify all other State restrictions. The requirements of the Due Process and Equal Protection Clauses are to be read into section 402 as certainly as if they were incorporated expressly.

25/ On several significant occasions the Secretary, under the so-called "equitable treatment" doctrine, has disapproved State plans containing arbitrary eligibility restrictions not specifically interdicted by the Social Security Act. Thus, he has disapproved a State quota system which was racially discriminatory; State exclusion of Indians, or of mothers with illegitimate children, from public assistance; State denial of assistance because of an "unsuitable home," where no attempt is made to change the home environment or remove the child from it; and an arbitrary limitation on the kinds of former jobs which would qualify a family for assistance on the ground of the father's unemployment. See Note, 76 Yale L. J. 1222, n. 7 (1967), and references there cited. While the scope of this doctrine and the basis of the Secretary's authority to employ it are not entirely settled, it should be noted that the ruling regarding "suitable home" policies was ratified by Congress (42 U.S.C. §604(b) (1964); see Note, 76 Yale L. J. at 1224-25), and that regarding Indians was upheld in the single judicial decision ruling on the matter. Arizona v. Ewing, Civ. No. 2008-52 (D. D.C.), dismissal affirmed on jurisdictional grounds sub nom. Arizona v. Hobby, 221 F. 2d 498 (D.C. Cir.).

In the case of residency requirements, Congress came somewhat closer to the issue before the Court when it condemned residence requirements in excess of one year, but the same distinction governs. Congress left the shorter residency requirements untouched, without congressional approval or disapproval. Consequently, it had no more reason to express a judgment upon their constitutionality than upon any other constitutional question. The available evidence, as we have seen, rebuts the notion that Congress approved the wisdom, propriety, or constitutionality of the one-year-residence rule.

The distinction between congressional indifference and congressional sanction or approval has two important consequences in the present cases.

First, affirmance of the judgments leaves section 402 untouched. Nothing in the Social Security Act would be invalidated. Henceforth, the Secretary will withhold approval of State plans containing a one-year-residence requirement just as he would withhold approval of a plan which incorporated the separate-but-equal doctrine of Plessy v. Ferguson, acting upon the ground that section 402(a) is as much a mandate to comply with the Constitution as if its requirements were incorporated expressly. See Burton v. Wilmington Parking Authority, 365 U.S. 715, 725.

Second, the conscious decision of Congress neither to disapprove nor to establish one-year-residence requirements carries no finding or presumption to which the Court should

defer. Had Congress prescribed such a requirement for inclusion in State plans, that prescription would imply, under familar constitutional principles,[26] that Congress had found either the federal government or the States to be facing one or more problems of some substance to which the one-year-residence requirement was an appropriate response. But when, as here, Congress expressed no opinion upon residence requirements of a year or less, there was no reason for it to make any judgment upon their wisdom, propriety, or constitutionality, or upon any of the underlying facts.

B. Section 602(b), even if read to authorize one-year-residence requirements, would not control the constitutional issue.

If section 402(b) were to be read as affirmatively authorizing one-year-residence requirements, then it should be held unconstitutional for the same reasons as the State laws and provision of the District of Columbia Code challenged in these actions. Congress has "no power to restrict, abrogate or dilute these guarantees" of Equal Protection and Due Process (Katzenbach v. Morgan, 384 U.S. 641, 651, n. 10). Reaching that conclusion, however, would not involve

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26/ E.g., Katzenbach v. Morgan, 384 U.S. 641, 652-656.

any substitution of judicial judgment for a congressional finding made in the enactment of the Social Security Act upon matters of fact or questions of degree relevant to the constitutionality of the one-year-residence requirement.

In considering the Social Security Act, Congress made no determination that a one-year-residence requirement was an appropriate response to a social, economic, political, or administrative problem facing either the States or the federal government. The plain fact is that there is here no legislative finding upon the one-year-residence requirement; there was no investigation, there is no factual data or even a "congressional estimate." Even if it be assumed that Congress affirmatively authorized one-year-residence requirements, there is only "what can at most be called a legislative announcement that Congress believes a state law" to be permissible (Katzenbach v. Morgan, 384 U.S. 641, 651, 666, 669, Justice Harlan dissenting).

A mere declaration of permissibility will not support a presumption of congressional determination of any underlying legislative facts. When Congress imposes a requirement upon the States or enacts legislation directly operative upon persons subject to its jurisdiction, then it is obliged to come to grips with, and resolve, the matters of fact and question of degree determining the need for the legislation. Specifically, if Congress had prescribed a one-year-residence requirement for inclusion in State

plans, that prescription might imply that Congress found either the federal government or the States to be facing one or more problems for which the one-year-residence requirement was an appropriate solution. Congress could not fairly enact such a provision without making some such determination, and a proper respect for a coordinate branch of government may require the judicial branch to assume that Congress has performed its function fairly. But when Congress, at the very most, only authorizes a State either to omit or impose the requirement, it has no need to come to grips with the underlying questions. On the contrary, since such federal legislation leaves the operative decisions to the States, Congress may also appropriately leave unresolved all questions concerning the need or justification for the legislation.

Here the issue of statutory construction discussed earlier merges with that of constitutionality, and the forced and artificial quality of the asserted problem of judicial deference to congressional findings implicit in section 402(b) is exposed. There has been no legislative determination to which the findings would be relevant. The entire discussion of the constitutionality of section 402(b) assumes the existence of congressional sanction that was never granted, and it would be an intolerable compounding of fiction to go on to assume as well a legislative judgment justifying that sanction. The entire matter can be soundly avoided, with total fidelity to what in fact occurred, by

holding that section 402 simply does not speak to the matter of residence requirements of one year or less.

D.C. Code, §3-203 is, of course, a direct congressional adoption of the one-year-residence requirement for the District of Columbia. The presumptions and standard of review are the same as in the case of the State laws; and we assert its unconstitutionality upon the same grounds. Like the State laws, however, any presumed congressional finding implicit in D.C. Code, §3-203 carries none of the added weight of basic national legislation.

CONCLUSION

The judgments below should be affirmed.

Respectfully submitted,

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September 1968

Carl

In The

Supreme Court of the United States

October Term, 1967

No. 813

BERNARD SHAPIRO, Welfare Commissioner of Connecticut,

Appellant,

v.

VIVIAN THOMPSON,

Appellee.

No. 1134

WALTER E. WASHINGTON, et al.,

Appellants,

v.

MINNIE HARRELL, et al.,

Appellees.

No. 1138

ROGER A. REYNOLDS, et al.,

Appellants,

v.

JUANITA SMITH, et al.,

Appellees.

On Appeals from the District Courts of Connecticut, District of Columbia and the Eastern District of Pennsylvania.

BRIEF OF AMERICAN JEWISH CONGRESS, COUNCIL OF JEWISH FEDERATIONS AND WELFARE FUNDS, NATIONAL CONFERENCE OF CATHOLIC CHARITIES, NATIONAL COUNCIL OF THE CHURCHES OF CHRIST IN THE U.S.A. and SCHOLARSHIP EDUCATION DEFENSE FUND FOR RACIAL EQUALITY, AS AMICI CURIAE.

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INTEREST OF THE AMICI

The American Jewish Congress is a national organization of American Jews formed in part to protect the religious, civil, political and economic rights of Jews, to implement Jewish values and to promote the principles of democracy. The sacredness of human life is a foundation stone of Jewish ethics. It requires us to give aid to the poor not only as a charitable act motivated by pity, but as an obligation, an act of justice toward the recipient, who is entitled to it as a right by virtue of his common humanity with the giver. This is reflected in the fact that there is no word for charity in Hebrew; its nearest translation is "tzedakah" which translates into "righteousness" or "social justice." We believe that this fundamental concept of public responsibility to provide for the poor deeply embedded in the Judeo-Christian tradition is embodied in the concepts of due process and equal protection.

We join in this brief because we have become increasingly concerned with the deepening gulf between the great majority of Americans who enjoy the benefits of our unparalleled affluence and the minority who have been denied the opportunity to share in our abundance. We believe that the concepts of human dignity embodied in our Constitution and Bill of Rights must be asserted in this area to prevent this society from abandoning its poor.

(Additional paragraphs on other amici to be inserted.)

Statement of the Case

Each of these three cases involves an appeal from a decision by a three-judge District Court holding unconstitutional a state or Federal statutory provision imposing a residency requirement for eligibility to aid under the Federal program for Aid for Families with Dependent Children (hereinafter referred to as "AFDC"). (Section 17-2d of Chapter 302 of the General Statutes of Connecticut; Section 3-203(a)(b) (1967) of the District of Columbia Code; and Section 432(6) of the Public Welfare Code of Pennsylvania).

With one exception,* each of the plaintiff appellees in the three cases are children, and the adults upon whom those children depend for maternal care, who have been denied benefits under AFDC solely on the ground that they have not resided in the respective state or the District of Columbia long enough to comply with the particular residency requirement. The District of Columbia and Pennsylvania cases (Nos. 1134 and 1138) are class actions.

In each of the cases, the defendants appellants are officials responsible for administration of the AFDC program in their jurisdictions. AFDC programs provide relief "/f/or the purpose of encouraging the care of children in their own homes or in the homes of relatives by enabling each state to furnish assistance and rehabilitation and other services,

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* This brief is limited to the question of residency requirement under AFDC programs. Therefore, we do not address ourselves to the case of the one appellee in the District of Columbia case (Vera A. Barley) who challenges a residency requirement denying her relief under another categorical aid program, Aid for the Totally and Partially Disabled.

...." [42 U.S.C.A., Section 601]. Based upon a complicated formula set forth at 42 U.S.C.A., Section 603, qualifying AFDC state programs are reimbursed by the Federal Government in amounts varying between 50% to 80% of their payments.

Although the residency requirements differ in detail, the rejected applicants suing in each of the three cases would be required to reside within that state or the District of Columbia for one year before being eligible for AFDC benefits. In none of the cases does the respective government suggest that an alternative form of government relief is available to the rejected AFDC applicant, short of placing the child applicants in orphanages.

Although the facts with regard to each particular rejected applicant suing herein differ, the following generalizations can be made:

Appellees were denied relief because of failure to comply with residency requirements without regard to whether they had any alternative means of obtaining the necessities of life. Each of the appellees is unable to work for reasons independent of their having moved to the state, such as sickness, need to stay home to take care of very young children and, in the case of the child applicants, age.

Nothing in the records indicate that any of the rejected applicants suing here entered the respective state or the District of Columbia for the purpose of receiving higher welfare benefits than they received in the place they previously resided. In fact, Minnie Harrell and her family moved to the District of Columbia from an area where relief payments were higher, Nassau County, New York. Nor is there anything in the records to indicate that the applicants attempted to obtain relief they would not be entitled to but for the fact that they did not reside in the state for the necessary period of time. The records indicate

that most of the rejected families moved to the state or the District to be near relatives who at times provide some, albeit inadequate, support.

Questions to Which This Brief is Addressed

1. Are children who are denied relief under the AFDC program solely because of noncompliance with a residency requirement deprived of their right to due process of law, in violation of the Fifth and Fourteenth Amendments?

2. Does such denial of relief under the AFDC program impose an unconstitutional burden on freedom to travel?

Summary of Argument

(to be done)

A R G U M E N T

POINT ONE

CHILDREN WHO STARVE BECAUSE GOVERNMENT FAILS TO PROVIDE RELIEF ARE DEPRIVED OF ~~XXXX~~ DUE PROCESS OF LAW, IN VIOLATION OF THE FIFTH AND FOURTEENTH AMENDMENTS.

It is our position that a denial of AFDC assistance because of a residency requirement which may cause starvation and loss of life is a violation of the constitutional requirement of due process of law. Such a denial withholds assistance regardless of the reason for the applicant's presence in the state. Such an action is an arbitrary denial of property and, not inconceivably, of life, without due process of law.

A. The Obligation of Government to Provide for Persons In Need is Deeply Imbedded In Our Governmental System.

1. The Test of What Constitutes Due Process of Law.

In Powell v. Alabama, 287 U. S. 45 (1932) this Court said:

> One test which has been applied to determine whether due process of law has been accorded in given instances is to ascertain what were the settled usages and modes of proceeding under the common and statute law of England before the Declaration of Independence, subject, however, to the qualification that they be shown not to have been unsuited to the civil and political condition of our ancestors by having been followed in this country after it became a nation.

Another test of the scope of the constitutional Due Process guarantees, probably the same in effect, is the requirement that government conform to "that whole community sense of 'decency and fairness' that has been woven by common experience into the fabric of acceptable conduct." Breithaupt v. Abram, 352 U.S. 432, 436 (1957). Due process bars governmental action which "shocks the conscience." Rochin v. California, 342 U.S. 165, 172 (1952). It requires protection of those rights that are "so rooted in the tradition and conscience of our people as to be ranked as fundamental." Id. at 169, citing Snyder v. Massachusetts, 291 U.S. 97, 105 (1934); see also Palko v. Connecticut, 302 U.S. 319, 325 (1937).

We submit that, by either of these tests, a ~~state~~ statute that places children at the risk of starvation deprives them of due process of law.

2. The British Antecedents

Provision for the basic needs of the poor has been recognized as a duty of society since biblical times.[1] For four hundred years this need has been recognized by Anglo-American law as an obligation of temporal government.

In 1572, Parliament passed a law (14 Elizabeth c. 5) which was a landmark in the development of governmental assistance to the poor.[2] It established as national policy that the poor must be provided for through monies raised by public taxation.[3] Revision in 1597 (39 Elizabeth c. 3) and, more important, in 1601 (43 Elizabeth c.2) did much to establish the character of poor relief. TenBroeck, Jacobus, "California's Dual System of Family Law: Its Origin, Development and Present Status," Part I, 16 Stanford L. Rev. 257, 258 (1964).[4]

1/ ~~xxxxxxxxxxxxxxxxxxxxxxxxxx~~ Bible (King James Version), Deuteronomy 14:28, 29, 26:12; Matthew 25:31-46.

2/ English law on the subject of poor relief is relevent here not only because it illuminates the Due Process concept but also because American laws for relief of the poor were shaped by the English antecedents. Riesenfeld, The Formative Era of American Public Assistance Law, 43 Calif. L. Rev. 175, 177 (1955).

3/ Id. at 180 et seq.

4/ The principal section of 43 Eliz. c. 2 provided:

> That the churchwardens of every parish, and four...substantial householders there...shall be called overseers of the poor of the same parish; and they...shall take order from time to time, by and with the consent of two or more...justices of peace...for setting to work all such persons, married or unmarried, having no means to maintain them, and use no ordinary and daily trade of life to get their living by: and also to raise...(by taxation of every inhabitant...and of every occupier of lands, houses...or saleable underwoods in the same parish ...) a convenient stock of flax, hemp, wool, thread, iron and other necessary ware and stuff, to set the poor on work: and also competent sums of money for and towards the necessary relief of the lame, important, old, blind, and such others among them, being poor and not able to work, and also for the putting out of such children to be apprentices....(As modernized by Professor Riesenfeld, Id. at 178).

Professor tenBroeck described the salient feature of that period (at 262):

> The central concept and great achievement of the Elizabethan poor law was the firm establishment of the principle of public responsibility to maintain the destitute. Through it, the final step was taken, permanently shifting a part of the burden to relieve economic distress from the ecclesiastical, private, and voluntary to the civil, public and compulsory. The assumption of responsibility, moreover, was made by the nation and its application was nationwide.

The obligation of government to insure survival and the role of the judiciary in providing relief to the poor is reflected in Gilbert's Act of 1782, summarized by Sidney and Beatrice Webb as follows:

> ...Any applicant who could not get employment in the ordinary way should by the Poor Law Guardians -- without explaining how -- be provided with it and be fed and lodged until it could be given. Failing such relief, and justice of the peace was expressly empowered, after inquiry upon oath, to order "some weekly or other relief." Webb, S. & B., English Local Government. English Poor Law History, Vol. 1, Longmans Green & Co. Ltd. (1927) at 171.

In sum, the government duty to provide for the poor was so firmly implanted that, towards the end of the 18th century, Blackstone could state in his Commentaries:

> The law not only regards life and liberty and protects every man in the enjoyment of them, but also furnishes him with everything necessary for their support. For there is no man so indigent or wretched, but he may demand a supply sufficient for all the necessaries of life from the more opulent part of the community, by means of the several statutes enacted for the relief of the poor. (Page 95, American Editions of J. B. Lippincott & Co. from the 19th London Edition, Page 131, 12th ed., London, 1793).

This statement appears in Book I, entitled "Of the Rights of Persons," Chapter 1, entitled "Of the Absolute Rights of Individuals."

This "law of the land" was not confined to the homeland. An indication of England's concern that her colonial governments provide for the

needs of the poor is reflected in the request of the Committee for Trade and Foreign Plantations of the English Privy Council in 1680 for information as to provisions made in Connecticut for "relieving poor, decayed and impotent persons." Capen, Historical Development of the Poor Law of Connecticut, (Columbia U. Press, 1905) at 22.

3. The American Antecedents

A history of the reception of the English poor law into the thirteen original colonies, particularly with regard to government obligation to provide for the poor and the law of settlement is set forth ~~in~~ by Riesenfeld ~~"The Formative Era of American Public Assistance Law"~~ (Id. Op cit. supra at 203 et seq.). The early laws of the Massachusetts Bay Colony and New Plymouth clearly imposed the obligation on government officials (Id. at 204, 206, 208).

A detailed history of the development of the poor law in Connecticut is obtained in Capen, Historical Developement of the Poor Law of Connecticut (Columbia University Press (1905). See also Riesenfeld, supra, at 209, 212, 226, 228). As early as 1640, the colony of New Haven had provided for its poor (Capen, op. cit. supra at 22-23). The two colonies of Connecticut and New Haven had been united in 1665. In 1673, the general court ordered as follows:

> . . . .Every town within this colony, shall maintain their own poor. . . . If any person come to live in any town in this government, and be there received and entertained three months, if by sickness, lameness or the like, he comes to want relief; he shall be provided by that town wherein he was so long entertained, and shall be reputed their proper charge, unless such person has within the said three months been warned by the constable, or some one or more of the selectmen of that town, not there to abide without leave first obtained of the town, and certify the same to the next court of assistants who shall otherwise order the charge arising about him according to justice. (Capen, supra, at 29-30, referring to Law No. 57 of 1673.) /

/ For developments in Pennsylvania, see Beitel, Treatise on the Poor Laws of Pennsylvania (T. & J.W. Thompson & Co., Pa., (1899)); Heffner, History of Poor Relief Legislation in Pennsylvania, 1682-1913, Holzpfel Publishing Co. (1913).

This public responsibility to support the destitute was also recognized in those states organized west of the Allegheny Mountains. Abbott, PUBLIC ASSISTANCE, AMERICAN PRINCIPLES AND POLICIES, Vol. 1, University of Chicago Press (1940), pp. 3-35. To give only one example (Id. at 5): Kansas acknowledged this government responsibility in its first constitution in 1859 by providing, in Article vii, sec. 4:

> The respective counties of the State shall provide as may be prescribed by law for those inhabitants who, by reason of age, infirmity, or other misfortune, may have claims upon the sympathy and aid of society.

Thus England, the American colonies and the states regarded themselves as being legally obligated to provide for the poor. Justice Brewer was speaking of a principle by then fundamental to the entire country when he said in State ex rel. Griffith v. Osawkee Twp., 14 Kan. 418, 421 (1875), prior to his elevation to this Court:

> The relief of the poor--the care of those who are unable to care for themselves--is among the unquestioned objects of public duty. In obedience to the impulses of common humanity, it is everywhere so recognized.

With the adoption of the Social Security Act of 1935, the involvement of government in providing basic needs assumed new dimensions. "The law established the individual's immediate welfare as a matter of national concern entitled to consideration in the deployment of national resources." Wedemeyer, J.M. and Moore, Percy, "The American Welfare System," 54 California L. Rev. 326, 347 (1966).

Adoption of the Act constituted recognition that participation of the national government was inevitable "...if the people were not to starve." Steward Machine Co. v. Davis, 301 U.S. 548, 586 (1937).

B. The Absence of an Individual Right to Enforce the Governmental Responsibility Results in Large-Scale Evasion of the Responsibility.

1. The denial of an individual right.

While British and Anglo-American law thus recognized a governmental obligation toward the poor, it must be conceded that it did not recognize an individual right to enforce that obligation. As the Webbs pointed out, "What was enacted was not a right at all, but an obligation." Op. cit. supra, p. 401. Poverty was treated as a public nuisance, subject to abatement by public officials (ibid).

Similarly, in this country, the obligation of the government to provide for the poor has not been regarded as vesting a right in the individual poor person to compel government to meet its obligation through recourse to the courts.

> The English law has perhaps again influenced our American statutes and their interpretation on this point. In England it has long been an established legal principle that the duty of the local authority to relieve the poor is "a duty owed to the public and not to the poor person himself," and that "no action can be brought . . . . by the poor person if relief is refused him, or if an officer is negligent in giving relief." (Abbott, op. cit. supra, p. 20, citing W. Ivor Jennings, The Poor Law Code (London, 1930), p. lxxvi.)

2. The resulting denial of aid to the poor.

The isolation of the obligation of government from the development of corresponding rights and duties has had disastrous results. Without enforcement of individual rights by court action, local administrators were free to limit relief in almost any way they saw fit. Chief among the limitations were the settlement laws, the direct ancestors of the present day residency requirements. tenBroeck, op. cit. supra, at 263. The resulting evils, from Elizabethan times to the present, are described by Professor tenBroeck (id. at 565):

> Only those who had been born in a community or had long lived there were eligible. Other poor persons were kept out or removed to the place of their settlement. The size of the taxing and paying unit thus was determinative. From the community's point of view, he was bound to the place of his misfortune, restricted in his free movement and his personal opportunity. From society's point of view, the economy was fragmented, rendering more difficult the solution of economic problems that were regional and national. All of this is true today. 5/

Residency requirements are applied regardless of whether the rejected recipients have any alternative source of support for staying alive.

5/ For other evils see Riesenfeld and Maxwell, Modern Social Legislation, 709 (1950):

> The need for or the actual receipt of assistance created... a veritable "pauper status." Thus the pauper was required to wear a badge with the letter P, a practice that was first given statutory sanction by the Pennsylvania Poor Law Amendment Act of 1718, 3 Pa. Stat. at L. 1712-1724, 221 (1896); he was required to be farmed out to the highest bidder at public auction, see, e.g., Indiana Poor Law of 1807...; he could be thrown into the poor-house against his will, see, e.g., Harrison v. Gilbert, 71 Conn. 724, 43 Atl. 190 (1899) (denying a writ of habeas corpus); he could and apparently still can, without violation of his constitutional guarantees, be forcibly removed to his place of settlement; Lovell v. Seeback, 45 Minn. 465, 48 N.W. 23 (1891); he lost the right to vote and still does under the constitution of Massachusetts, Mass. Const, Art. of Amendments III, and Texas Tex. Const. Art. VI, Sec. 1.

As far as the state is concerned, these people are left to starve to death. If they are fortunate, they may obtain relief from a voluntary charity of an amount the charity feels it can afford. No voluntary organization is required to provide such relief. And when there are no private agencies or no money, people not receiving public relief may actually starve or freeze to death.

Thus, implicit in the defense of these three states to their right to use residency requirements as an absolute bar to AFDC payments, no matter how great the need of the applicant, is the proposition that the state may let children residing within its boundaries die for lack of such necessities as food and shelter.

AFDC is a last resort. The hardship which regularly results from its denial because of failure to meet residency requirements is aptly illustrated by the desperate situation Minnie Harrell and her three children face (one of the families in the District of Columbia case). Ill with cancer, unable to work, unable to continue staying at the small home of her brother (who has a wife and six children he is trying to support on wages of $1.60 per hour as a tire changer), the Child Welfare Division of the Department of Public Welfare of the District of Columbia can only suggest that Minnie Harrell consider placing her children in an orphanage.

Nowhere in the record of any of the three cases is there any suggestion that denial of AFDC benefits is dependent upon the availability of alternative relief programs for which the rejected AFDC applicants are eligible. The extent of the failure of AFDC to meet the needs of the one child out of every five children in this country who lives below the poverty line is implicit in the following statement (Orshansky, "Recounting the Poor - A Five Year Review," Social Security Bulletin,

April, 1966, pp. 15-16):

> In contrast to this total of 15.6 million needy children, in December 1963 only 3.1 million children were receiving assistance in the form of aid to families with dependent children, the public program designed especially for them.

Children are kept off the welfare rolls and denied AFDC payments for many reasons. One of them is because such children fail to meet residency requirements.

C. The Denial of AFDC Relief because of Residency Requirements Results in a Denial of Life and Property.

In 1964, there were 34.1 million Americans, of whom almost 15 million were children, whose income was below the poverty line.[6] Orshansky, op cit. supra, pp. 12-13. For these people, each day requires a choice between an adequate diet of the most economical type and some other necessity because there is not enough money for both. Of the 15 million children living below the poverty line in 1964, 5.7 million were under age six (ibid.).

Whether one regards the benefits provided pursuant to the categorical assistance programs of the Social Security Act as "rights" or "privileges," they must be recognized as basic to human survival. Unlike many other benefits provided by government, the Social Security Act programs provide only for needs basic to life and usually less than that. Under the Act, each state is required to establish "minimum standards of health and decency" but is only required to furnish assistance "as far as practicable under the conditions in such State." Cf. 42 USCA 3602 and 606 S.S.A. of

6/ The poverty line is defined in Orshansky, "Counting the Poor: Another Look at the Poverty Profile," Social Security Bulletin, January 1965, pp. 5-13. It is based on an "economy" food plan prepared by the Department of Agriculture for "temporary or emergency use when funds are low" (at p. 6) and allows an average of 70 cents per day per person for food and an additional $1.40 per day per person for all other items, including housing, medical care, clothing and carfare (p. 4).

1935; ch 531; 49 Stat 620. As a result many states pay only a percentage of their own "minimum standard." The "survival" which these payments permit is commonly one in which the beneficiaries are ill housed, ill clothed and ill fed. As we have just been told by the National Advisory Commission on Civil Disorders (U. S. Riot Commission Report, Bantam Books ed., (1968), p. 458):

> This sum [an average of about $36 monthly for each recipient of AFDC] is well below the poverty subsistence level under any standard. The National Advisory Council on Public Welfare has commented:
>
> > "The national average provides little more than half the amounts admittedly required by a family for subsistence; in some low-income states it is less than a quarter of that amount. The low public assistance payments contribute to the perpetuation of poverty and deprivation that extend into future generations."

We submit that the poor are plainly deprived of "property" when government withholds the relief it is responsible for supplying. The deprivation of life itself, however, is of greater concern. As we have shown, the residency requirement is imposed by the states without regard to the consequences to the individual family or its children. They are literally left to starve. Even if they escape death the resulting impairment of both mental and physical health must be viewed as a deprivation of "life."[7]

We recognize, of course, that it is not enough to show that there has been a deprivation of life or property. The deprivation must be "without due process of law." Here, it is argued that the deprivation is not without due process because the residency requirement is reasonably designed to achieve proper public objects. The various justifications given

7/ See New York Times, March 25, 1968, p. 47, "Hunger and Sickness Affect Mississippi Negro Children"; New York Post, March 27, 1968, p. 2, "Secret Report: 10 Million Go Hungry in U.S."

for the requirement are dealt with below (Point IIC) in the discussion of the restraint on the right to travel. The only further point to be made here is that the denial of due process may not be upheld on the ground that the individual poor person has no right to obtain enforcement of the governmental responsibility.

D. Our Constitutional System Requires Recognition of an Individual Enforceable Right to Poor Relief

We believe we have shown that the obligation of government to provide poor relief is so fundamental and of such long standing as to be regarded as part of the basic "law of the land" which is incorporated in the due process concept. It would be inconsistent with our system of law to recognize this responsibility while denying those who would benefit from it the right to enforce it.

Absent such a right, the Federal and state government and their agents are free to adopt any rule they may choose to limit their performance of their recognized responsibility. This Court said in Jones v. Securities and Exchange Corporation, 298 U. S. 1, 23-24 (1935):

> .... to the precise extent that the mere will of an official or an official body is permitted to take the place of allowable official discretion or to supplant the standing law as a rule of human conduct, the government ceases to be one of laws and becomes an autocracy.

See also Justice Brandeis concurring in St. Joseph Stockyards Co. v. United States, 298 U.S. 38, 84 (1936); Justice Jackson concurring in Youngstown Sheet & Tool Co. v. Sawyer, 343 U.S. 579, 646 (1952).

The Due Process Clause has stood as a guarantee of the liberties of Americans largely because of its expanding enforcement of purely procedural rights. The fact that the right of the individual poor person to claim his due has not been recognized up to now is not a barrier to present recognition, if in fact the right is essential to assuring "decency and fairness." As this Court said in Frank v. Maryland, 359 U. S. 360, 371 (1959):

> It is of the very nature of a free society to advance in its standards of what is deemed reasonable and right. Representing as it does a living principle, due process is not confined within a permanent catalogue of what may at a given time be deemed the limits or the essentials of fundamental rights.

~~Itxinvqx~~

It is particularly appropriate that due process develops so as to protect the poor. As stated in Wolf v. Colorado, 338 U.S. 25, 27 (1949):

> This Clause exacts from the States for the lowliest and the most outcast all that is "implicit in the concept of ordered liberty" (citing Palko v. Connecticut, 302 U.S. 319, at 325).

POINT TWO.

RESIDENCY REQUIREMENTS ~~ARE~~ (PLACE AN) UNCONSTITUTIONAL BURDEN ON ~~BECAUSE THEY INTERFERE WITH~~ THE RIGHT TO TRAVEL.

Government cannot bargain with the poor so as to buy up basic rights of citizenship in exchange for the necessities of life. Residency requirements in effect take from the poor the right to travel, the right to make the most of job opportunity and freedom to associate with relatives and loved ones.

A. The Right to Travel

In United States v. Guest, 383 U.S. 745, 747 (1966), this Court said:

> The constitutional right to travel from one State to another, and necessarily to use the highways and other instrumentalities of interstate commerce in doing so, occupies a position fundamental to the concept of our Federal Union. It is a right that has been firmly established and repeatedly recognized.

Again at page 759, this Court said:

> Although there have been recurring differences in emphasis within the Court as to the source of the constitutional right of interstate travel, there is no need here to canvas those differences. Further, all have agreed that the right exists.

The importance attached by the Court to the right to travel is also reflected in cases dealing with international travel Kent v.Dulles, 357 U.S. 116, 126 (1958); Aptheker v. Secretary of State, 378 U.S. 500, 505 (1964).

The right to travel includes the right to settle in a state. In Edwards v. People of the State of California, 314 U.S. 160 (1941), this Court held that a law making it a misdemeanor to assist in bringing into the state any indigent person who is not a resident of the state was unconstitutional. The defendant Edwards had assisted his indigent brother-in-law to enter California for the purpose of residing there. California argued that it could not bear the financial burden resulting from the migration of indigents to the state (314 U.S. at 168):

> Their coming here has alarmingly increased our taxes and the cost of welfare outlays, old age pensions, and the care of the criminal, the indigent sick, the blind and the insane.
>
> Should the States that have so long tolerated, and even fostered the racial conditions that have reduced their people to their state of poverty and wretchedness, be able to get rid of them by low relief and drive them into California to become our public charges, upon our immeasurably higher standard of soc. services? Naturally, when these people can live on relief in California better than they can by working in Miss., Ark., Tex. or Okla., they will continue to come to this state.

This Court rejected that argument (at 173):

> The State asserts that the huge influx of migrants into California in recent years has resulted in problems of health, morals, and especially finance, the proposrtions of which are staggering. It is not for us to say that this is not true. We have repeatedly and recently affirmed, and we now reaffirm, that we do not consider it our function to pass upon the wisdom, need, or appropriateness of the legislative efforts of the states to solve such difficultites [citing cases.]

> But this does not mean that there are no boundaries to the permissible area of State legislative activity. There are. And none is more certain than the prohibition against attempts on the partof any single State to isolate itself from difficulties common to all of them by restraining the transportation of persons and property across the borders.

Thus, this Court has made it clear that the poor have the right to travel as well as the rich. As Justice Jackson said, concurring in Edwards, supra (314 U.S. at 185):

> Any measure which would divide our citizenry on the basis of property into one class free to move from state to state and another class that is poverty-bound to the place where it has suffered misfortune is not only at war with the habit and custom by which our country has expanded, but it is also a shortsighted blow at the security of property itself.

See also the concurring opinion of Justice Douglas (at 177).

B. The Burden on the Right to Travel Imposed by Residency Requirements.

Residency requirements impair the right to travel when they burden its exercise by compelling forfeiture of government benefits. Here, as in Sherbert v. Verner, 374 U.S. 398 (1963), the citizen is forced to choose between the exercise of basic rights (there, the free exercise of religion) and the forfeiture of government benefits. The citizen is subjected to "a choice between the rock and the whirlpool." Frost & Frost Trucking Company v. Railroad Commission, 271 U.S. 583, 593 (1926).

This is precisely the predicament faced by AFDC recipients. The pressure to forego their right to travel is unmistakable. Denial of the basic benefits involved here derives solely from the exercise of the constitutionally protected right to travel.

This Court has consistently rejected distinctions based on the fact that the potential beneficiary is not prevented from exercising his basic rights, but merely deterred or inhibited: " The threat of sanctions may

deter their exercise almost as potently as the actual application of sanctions." Aptheker, supra, 375 U.S. at 516, citing NAACP v. Button, 371 U.S. 415 (1963).

Even a "chilling effect" on the exercise of basic rights is sufficient to condemn restrictive action. Dombrowski v. Pfister, 380 U.S. 479 (1965)

This is true where the benefits derivable from the state are far less valuable than those in question here. Indeed, even where the benefits are completely gratuitious and even ephemeral, they may, not be subjected to conditions which "deter or inhibit" the exercise of basic rights. Speiser v. Randall, 357 U.S. 513 (1958) (a tax exemption conditioned on a loyalty oath).

The travels of the poor are already sufficiently encumbered by the fact of their poverty. The poor travel for reasons far more basic than their affluent contemporaries.

It should be remembered that AFDC benefits are given only when the family has no alternative means of support. 42 U.S.C.A. §602(7) AFDC families cannot, in many cases, choose to forego the benefit and exercise the liberty to travel. Practically speaking, conditioning welfare benefits on residency tends to tie the poor to the place of their misfortune in the same manner as the English statutes regarding settlement and removal of the poor in the 18th Century. Those who do succeed in moving out of unsatisfactory circumstances often find themselves in a shocking position:

1. Some American citizens are stateless, having lost residence in one place without gaining it in another, and ineligible for assistance anywhere. Some of these people can never become eligible because in certain states they cannot gain residence unless they are self-supporting.

2. Others are sent back to their place of residence even when their return is undesirable from the point of view of the individual or the community. Simons, Saville H., Social Welfare Forum - National Conference on Social Welfare, 1962.

C. The Restrictions Placed on the Right to Travel by Residency Requirements are not Justified by Compelling Necessity.

Like most constitutional rights, the right to travel is subject to restriction in the public interest. Yet, this Court has made it plain that restrictions may not be lightly imposed or sustained.

This Court has frequently referred to "the preferred place given in our scheme to the great freedoms secured by the First Amendment." Thomas v. Collins, 323 U.S. 516, 530 (1945). As stated in Thomas, "Only the gravest abuses, endangering paramount interests, give occasion for permissable limitation" (323 U.S. at 530). In such cases, the "subordinating interest of the State must be compelling." National Association for the Advancement of Colored People v. Alabama, 357 U.S. 449, 463 (1958), quoting Justice Frankfurter concurring in Sweezey v. New Hampshire, 354 U. S. 234, 265 (1957). See also Marsh v. Alabama, 326 U.S. 501, 509 (1946); Prince v. Massachusetts, 321 U.S. 158, 164 (1944).

In Aptheker, this Court placed freedom to travel in the same category, saying (378 U.S. at 517):

> Similarly, since freedom of travel is a constitutional liberty closely related to rights of free speech and association, we believe that appellants in this case should not be required to assume the burden of demonstrating that Congress could not have written a statute constitutionally prohibiting their travel.

While residency requirements are not direct limitations on travel, when the choice is possible starvation if one does travel, the effect is little different from a direct prohibition.

Leeway may be given, presumably, for regulation by the states in areas of direct concern. When a state conditions the right to vote, or to become a member of the bar, on minimum residency, it can be concluded that, on balancing the indirect limitation on travel against the interest of the

state, the state is legitimately protecting its electoral process and the functioning of its courts. Familiarity with conditions in the state is reasonably related to voting and familiarity with local law and court processes is reasonably related to the attorney function. In each case, the small limitation on travel is justified. But where, as here, the asserted interest of the state is balanced against the very life of a person, that interest must yield.

Moreover, we are dealing here with a national program, laid down in a national statute and funded primarily by the national government. Restrictions on access to the benefits of that program, imposed by a state, must be tested by stricter standards.

It should be noted at the outset that the residency requirement does not further but rather frustrates the purpose of the Federal statutory scheme. The purpose of the AFDC program is set forth in the Federal statute creating the program and authorizing Federal contributions to its financing:

> For the purpose of encouraging the care of dependent children in their homes or in the homes of relatives by enabling each State to furnish financing ~~xxx~~ assistance and rehabilitation and other services, as far as practicable under the conditions in such States, to needy dependent children and the parents or relatives with whom they are living to help maintain and strengthen family life and to help such parents or relatives to attain or retain capability for the maximum self-support and personal independence consistent with the maintenance of continuing parental care and protection, there is authorized to be appropriated for each fiscal year a sum sufficient to carry out the purposes of this subchapter. Social Security Act of 1935, § 401, as amended, 42 U.S.C.A. § 601.

Residency requirements bear no relationship whatever to this purpose. In fact, failure to provide ~~relief~~ assistance payments for one year will frustrate the purpose of the statute, often resulting in the break-up of homes prior to the time the family can become eligible for welfare. For example, the Harrell family in the District of Columbia case has been advised that since Mrs. Harrell and her three children are not eligible for AFDC payments, Mrs. Harrell should consider breaking up her home and placing her children in an orphanage. (Citation) The three-judge court in Delaware, recently holding that the AFDC residency requirement in Delaware is unconstitutional, said:

> It is evident to us that as to these families living in Delaware for less than one year the denial of public assistance fails to carry out the stated purposes of the Public Assistance Code. It in fact tends to frustrate them. The residency requirement prevents prompt assistance to some of the State's needy and distressed and to that extent is the antithesis of "humane." It also necessarily results in pressure on the solidarity of the family unit. Nor given these circumstances is it an acceptable answer to say that until they are here one year such persons are not a part of the state's needy and distressed. The discrimination based on length of residency thus finds no constitutional justification in the purpose declared in the statute itself. Green v. Department of Public Welfare, 270 F. Supp. at 177 (D. Del. 1967).

What, then, are the justifications offered for residency requirements? They appear to be as follows: (1) The need to discourage poor persons from coming into the state or remaining in the state; (2) the need to make it unprofitable to come to a state to obtain higher AFDC benefits; (3) the need to provide an objective test of whether there is an intent to become a permanent resident of the state; and (4) the need to obtain certainty in preparing state budgets.

The first of these justifications is squarely in conflict with this Court's decision in the Edwards case. The direct holding of that

case was that states may not exclude the indigent.

The other three ~~jurisdictions~~ justifications are dealt with in detail in the decisions of the courts below in these three cases, as well as in decisions by other three-judge District Courts in cases now pending. We make but a few points here.

The legislative history of most if not all residency provisions reveals an assumption that indigents move from state to state to achieve higher welfare benefits and a further assumption that a residency requirement will halt or impede such movement ~~(Appendix, No. 813, pp.)~~ (See Opinion of the court below in No. 813, App. 26a). Not only is the premise that people move to a state for the purpose of obtaining welfare assistance demonstrably false, but also the purpose of deterring movement fails completely. As Simons wrote several years ago (op cit. supra, p. 174):

> All evidence shows this is not so. People move primarily to ~~xxxx~~ secure employment, to be with relatives, sometimes to find a more favorable climate, or in order to cope with emotional problems. California, Arizona and Florida have the highest residence requirements permitted, but they continue to have the highest in-migration in the country. On the other hand, in New York State even before the Anti-Abuse Law went into effect, when there was no legal residence requirement for public assistance, less than 2 per cent of the cases receiving assistance had been in the state less than one year, even though New York has high assistance standards and is surrounded by states that make lower payments.

Simon's statements are supported by statistics compiled by Robert J. Lampman from 1950 and 1960 census figures. Lampman, R.J., "Population Change and Poverty Reduction, 1947-1975," in Fishman, L. (ed.), POVERTY AMID AFFLUENCE (1966), pp. 36-37. Moreover, there is no indication from states that have repealed residency statutes of any increase in the number of in-migrants seeking a welfare bounty.

The simple fact is that poor people move for a variety of reasons. By far the largest population shift of recent decades has been that of the Southern Negro. That shift has been due primarily to the displacement of Negroes from Southern agriculture and increases in industrial employment in the North, as the National Advisory Commission on Civil Disorders made clear in its recent Report (op. cit ~~supra~~), pp. 236-242). See also, Myrdal, AN AMERICAN DILEMMA, pp. 188-9, 191, 193-6, 251.

Undoubtedly, some people move to obtain higher welfare benefits, but it should be noted that this is not true of any of the plaintiffs before this Court or in other cases challenging residency requirements in lower courts. For example,

Vivian Thompson (in No. 813), Gloria Jean Brown, Clay Mae Legrant, Minnie Harrell (in No. 1134) and Mrs. Loretta Ramos (Ramos v. Health & Social Service Board, 276 F. Supp. 474 *E.D. Wisc. 1967) and their childred came to the respective jurisdictions to be near to or live with relatives. Mr. Green (Green v. Dept. of Public Welfare of Delaware, 270 F. Supp. 173 (D. Del. 1967)), came to take a job as a construction laborer.

In any event, the residency requirement punishes not only those who may conceivably move for higher welfare payments but also the family looking for work and even the man who comes to the state having a job which ends for reasons beyond his control. The good are thus punished in order to get to the few bad. This blunderbuss technique is not constitutionally permissable, particularly where rights of freedom are involved.

We submit that the various justifications given for the residency requirement do not reveal that "compelling" interest of the state which alone can justify curtailment of constitutional freedoms. NAACP v. Alabama, supra. For that reason, the requirement must be held invalid.

CONCLUSION

It is respectfully submitted that the judgments below in each of these cases shoud be affirmed.

Names, etc. to be inserted,
as per cover.

MSS - SEDFRE
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SHEAFE, RUBY et.al. VS WYMAN, GEORGE, K. et.al. NEW YORK 1968
(TERMINATION of ASSISTANCE PAYMENTS WITHOUT A HEARING)

Box 42
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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

RUBY SHEAFE, individually and on behalf of all other persons similarly situated, and ESTHER LETT, on behalf of herself, her minor dependents and all other persons similarly situated, Plaintiffs, vs GEORGE K. WYMAN, individually and in his capacity as Commissioner of the New York State Department of Social Services, and JACK R. GOLDBERG, individually and as Commissioner of the New York City Department of Social Services, HUGH R. JONES, as Chairman of the State Board of Social Welfare, and MRS. OMAR ADAMS, DOROTHY I. HEIGHT, RICHARD G. KIMMERER, JOHN M. GALBRAITH, EDWARD J. JOHANNES, JR., ARTHUR G. HOPKINS, MRS. MONICA M. McCONVILLE, JOHN P. HALE, MRS. ALEXANDER E. HOLSTEIN, JR., FREDERICK A. KLINGENSTEIN, GEORGE F. BERLINGER, THEORDORE C. JACKSON, JOSE LOPEZ, and DAVID BERNSTEIN, as Members of the Board of Social Welfare, Defendants.	Civil Action No._____ COMPLAINT FOR THREE-JUDGE COURT, DECLARATORY JUDGMENT, INJUNCTIVE RELIEF

I

This is an action for injunctive and declaratory relief and damages authorized by Title 42 U.S.C. 1983 to secure rights, privileges and immunities established by the Fourteenth Amendment to the Constitution of the United States and the Social Security Act, Title 42 U.S.C. 301 et seq., and the regulations promulgated thereunder. Jurisdiction is conferred on this Court by Title 28 U.S.C. 1343(3) and (4) providing for original jurisdiction of this Court in suits authorized by Title 42 U.S.C. 1983; and jurisdiction is further conferred on this Court by 28 U. S. C. 2201 and 2202 relating to declaratory judgments.

II

This is a proper case for determination by a three-judge court pursuant to Title 28 U.S.C. 2281 and 2284, in that it seeks an injunction to restrain the defendants from applying, enforcing, executing and implementing Sections 213 (2), 214, 304, 325, 350(2)(b), and 353 (2) of the New York

Social Services Law, Section 351.22 and 356.4 of Volume 18, Official Compilation of Code, Rules and Regulations of the State of New York (hereafter referred to as 18 N.Y.C.R.R.), Sections 84.2 - 84.24 of 18 N.Y.C.R.R. promulgated by the New York State Board of Social Welfare to supersede Section 351.22 and 356.4 on March 1, 1968, Sections 351.26 of 18 N.Y.C.R.R. promulgated by Defendant WYMAN effective March 1, 1968, and related statutes, rules and regulations, insofar as these statutes and regulations require termination or suspension of financial aid in the form of public assistance [Aid to Families with Dependent Children (AFDC), Aid to the Aged, Blind and Disabled (AABD) and Home Relief (HR)] prior to the granting of adequate notice and opportunity for a hearing which meets due process standards, on the grounds of the invalidity of said statutes and regulations under the Constitution and laws of the United States.

III

This action seeks an injunction and declaratory judgment restraining the enforcement of, and declaring unconstitutional, the aforesaid state statutes and state-wide rules and regulations, on their face and as applied and interpreted by defendants, on the grounds that said statutes, rules and regulations, and actions taken pursuant thereto, deprive plaintiffs of the due process of law guaranteed by the Fourteenth Amendment to the United States Constitution and, so far as the AFDC and AABD programs are concerned, deprive plaintiffs of the "fair hearing" guaranteed by the Social Security Act, in that said statutes, rules and regulations deny to plaintiffs an opportunity for a hearing which satisfies due process standard prior to termination or suspension of financial aid under the public assistance program.

IV

Plaintiffs ESTHER LETT and RUBY SHEAFE and adult citizens of the United States and residents of the City and State of New York who received public assistance until aid

was terminated without a hearing.

V

Plaintiffs bring this action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of themselves and all other recipients of public assistance who are similarly situated. All public assistance recipients are similarly affected by the statutes, rules and regulations challenged herein in that all are by statute, rule and regulation made subject to peremptory ex parte termination of their aid. The persons in the class are so numerous as to make joinder impractical; there are common questions of law and fact; plaintiffs' claims are typical of the claims of the class; and the representative plaintiffs will fairly and adequately protect the interests of the class. The parties opposing the class have acted or refused to act on grounds generally applicable to the class.

VI

Defendant GEORGE K. WYMAN is the Commissioner of the Department of Social Services of the State of New York and is charged with statewide administration of the public assistance program and with establishing regulations to carry out the statutory provisions of said program.

Defendant JACK R. GOLDBERG is Commissioner of the Department of Social Services of the City of New York and is responsible for administering the public assistance program in the City of New York.

Defendant members of the State Board of Social Welfare are responsible for the promulgation of rules governing the policies and conduct of the Department of Social Services of the State of New York.

VII

The aforesaid public assistance programs created by the New York Social Services law provide financial aid to certain needy persons. Persons who meet the statutory criteria receive financial aid as a matter of statutory entitlement.

VIII

At all times relevant hereto the State of New York and defendants, in order to receive federal funds for the Aid to Families with Dependant Children and Aid to Aged, Blind, and Disabled programs, have been required by the Social Security Act, Title 42 U.S.C. Sec. 301 et seq., to have formulated a "state plan" for said programs in conformity with the provisions of the Act and the United States Constitution. The Social Security Act, as interpreted by regulations of the United States Department of Health, Education and Welfare, requires that a "state plan" provide for granting an opportunity for a fair hearing before the state agency to any individual aggrieved by an action of a local Department of Social Services.

IX

1. Plaintiff RUBY SHEAFE is thirty five years old and was a recipient of Home Relief assistance in the amount of approximately $52.00 semi-monthly from September, 1966 to January 8th, 1968.

2. Plaintiff received a semi-monthly grant computed on a supplemental basis since she worked part time.

3. On January 8, 1968 Plaintiff visited her case worker at the Gramercy Welfare Center to discuss with her worker the computation of her semi-monthly grant. The worker told the Plaintiff that Plaintiff must give the worker the name and address of a former employer of Plaintiff, for she wished to contact him. Plaintiff told the worker that she had already been investigated and found to be elegible for Public Assistance. Plaintiff inquired as to the reason for the reinvestigation of her eligibility. The worker refused to give Plaintiff a reason and insisted that the plaintiff disclose the name and address and telephone number of her former employer. Plaintiff refused to divulge the information without first being informed why this information was being requested. Plaintiff informed the worker that she would be more than willing

to allow the Department to contact her present employer, for whom she has been working since being accepted for public assistance. The worker then informed Plaintiff that her case was closed and walked away.

4. Plaintiff did not receive her assistance check due January 16, 1968.

5. Plaintiff received a "Notice of Discontinuance" dated January 17, 1968 (see attached Exhibit A) informing Plaintiff that her case was closed for "refusal to permit visits (collateral)".

6. On January 26, 1968 Plaintiff requested a fair hearing to review the reasons for her aid being discontinued. No hearing has yet been scheduled.

7. Plaintiff attempted to visit her case worker on February 5, and 13, and remained in the center all day without being interviewed.

X

1. Plaintiff ESTHER LETT is 45 years old and was a recipient of public assistance in the A.D.C. category on behalf of herself and four minor nieces and nephews.* Until February 1, 1968, she regularly received $ 72.00 semi-monthly from the New York City Department of Social Services.

2. Mrs. Lett last received her regular public assistance check on February 1, 1968. On February 11, 1968 she received a notice from the Department of Social Services stating that aid was being discontinued for "Failure to disclose assets." Attached was a letter stating that the Department has been advised by the New York City Board of Education that Mrs. Lett had been employed by the Board of Education since July 1967 as a teacher's aide at a salary of $ 1.75 per hour, averaging 30 hours per week. It also contained names of private day care centers and dates on which Mrs. Lett allegedly worked during the months of September, October and November.

* Virginia Hubbard, age 15; Ann Byrd, age 12; Cladcile Byrd, age 7; and Aaron LaMent Hubbard, 3 months.

3. Mrs. LETT was employed by the New York City Department of Education during July and August of 1967. The Department of Social Services was fully aware of that and it was discussed during a fair hearing on July 20, 1967. During this period Mrs. Lett did not receive any public assistance.

4. Mrs. LETT had also informed her investigator that she was seeking day to day employment from the Professional Placement Center of the New York State Department of Labor; and the Department of Social Services was aware of her employment during September, October and Novemb er of 1967. The Department was informed of the employment both by Mrs. Lett and by a Mrs. Levine of the Professional Placement Center who had written to the Department of Social Services in support of Mrs. Lett's request for a telephone so that she could be reached each day for employment .

5. Mrs. LETT and her four children have not been able to maintain a minimum diet since their aid was discontinued. They have been forced to depend on the charity of their neighbors. Mrs. Lett has no financial resources with which to feed herself and her dependents.

6. On February 18, 1968, they were forced to go to Harlem Hospital for treatment of a severe case of diarrhea. The only meal they had eaten that day was chicken and rice donated by neighbors.

7. On the night of Thursday, February 22, 1968 Mrs. Lett went to the Emergency Welfare Center located at 11 West 13th Street, New York, New York. When she explained to Defendant's employees at the Center that she was starving and needed money for food for herself and the four children, she was turned away on the grounds that she had concealed assets and therefore was ineligible for emergency assistance.

XI

Sections 213(2), 304, 325 and 353(2) of the New York Social Services Law, and 18 N.Y.C.R.R. Section 356.4 as in effect and as amended by 18 N.Y.C.R.R. Section 82.2 - 82.23, effective March 1, 1968, prescribing the hearing procedure

in the public assistance program, and Sections 214, 304(6), 325 and 350(2) (b) and 18 N.Y.C.R.R. 351.22 and 351.26 (effective March 1, 1968) prescribing the manner of termination or suspension of aid in the public assistance program, on their face, and as interpreted and applied to plaintiffs and members of their class, deprive the plaintiffs of the right of due process of law guaranteed by the Fourteenth Amendment to the United States Constitution and, to the extent applicable, of the "Fair Hearing" guaranteed by the Social Security Act in that said statutes and the regulations adopted in enforcement thereof authorize and require effective action terminating and suspending financial aid prior to the granting of reasonable notice and opportunity for a hearing which meets due process standards. The termination and withdrawal of financial aid may, under the presently enforced regulations, extend for a period of several months before a hearing is held and a decision is rendered, even though plaintiffs are prepared to prove that they are and have been eligible. Such deprivation is contrary to the purpose of the Social Security Act.

XII

Plaintiffs have no adquate remedy at law and defendants will continue to cause and threaten to cause irreparable injury to plaintiffs unless enjoined by this Court.

XIII

Plaintiffs have no adequate resources with which to support themselves and their families in the absence of their public assistance grants.

WHEREFORE, plaintiffs respectfully pray on behalf of themselves and all others similarly situated, that this court:

1. Assume jurisdiction of this cause and convene a three-judge Court pursuant to Title 28 U.S.C. §2281.

2. Enter a temporary restraining order and a preliminary injunction ordering the defendants to refrain from

a. refusing to pay the named plaintiffs herein their regular public assistance grants and

b. terminating aid to any recipient of public assistance without giving advance written notice stating the reasons for such action and without affording such recipient an opportunity for a hearing which meets the requirements of due process of law prior to withdrawal of aid.

3. Enter a declaratory judgment pursuant to Title 28 U.S.C. Sections 2201 and 2202 and Rule 57 of the Federal Rules of Civil Procedure declaring that Sections 213(2), 214, 304, 325, 350(2) (b) and 353(2) of the New York Social Service Law and related provisions, and the regulations and rules issued pursuant thereto, violate the Fourteenth Amendment to the United States Constitution and the Social Security Act on their face and as applied, insofar as they authorize and require termination or suspension of public assistance prior to granting reasonable notice and opportunity for a hearing meeting due process standards.

4. Enter a preliminary and permanent injunction restraining the defendants, their successors in office, agents and employees from terminating or suspending the aid of any public assistance recipient prior to the granting of reasonable and adequate notice and opportunity for a hearing which satisfies the standards of due process of law.

5. Allow plaintiffs their costs herein, grant them and all others similarly situated such additional or alternative relief including payment of all monies wrongfully withheld, as the Court may deem to be just and appropriate.

6. Award plaintiff Esther Lett and each of her four minor dependents, Virginia Hubbard, Ann Byrd, Cladcile Byrd, and Aaron LaMent Hubbard, damages in the amount of Ten Thousand Dollars ($10,000).

Respectfully submitted,

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VERIFICATION

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

I, RUBY SHEAFE, being duly sworn, hereby depose and say that I am a plaintiff in the above-entitled action, that I have read the foregoing Complaint, that I know the contents thereof, and that the statements therein contained are true to my own knowledge except as to those matters alleged on information and belief, which matters I believe to be true, and except as to those matters pertaining solely to the other named plaintiffs, about which matter I have no knowledge.

Ruby Sheafe
RUBY SHEAFE

Sworn to before me

this 28 day of February, 1968.

David Gilman
NOTARY PUBLIC

DAVID GILMAN
Notary Public, State of New York
No. 31-6522035
Qualified in New York County
Commission Expires March 30, 1968

VERIFICATION

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

I, ESTHER LETT, being duly sworn, hereby depose and say that I am a plaintiff in the above-entitled action, that I have read the foregoing Complaint, that I know the contents thereof, and that the statements therein contained are true to my own knowledge except as to those matters alleged on information and belief, which matters I believe to be true, and except as to those matters pertaining solely to the other named plaintiffs, about which matter I have no knowledge.

Esther Lett
ESTHER LETT

Sworn to before me

this 28 day of February, 1968.

Richard Kwasnik
NOTARY PUBLIC

RICHARD E. KWASNIK
Notary Public, State of New York
No. 31-2223612
Qualified in New York County
Commission Expires March 30, 1969

Copy of Complaint does not have all affidavits attached.
D.G.

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

RUBY SHEAFE, et al., Plaintiffs, v. GEORGE K. WYMAN, et al., Defendants	Civil Action No. 864/68 ORDER TO SHOW CAUSE

Let defendants show cause, in Room 506 of the United States Courthouse, Foley Square, New York, New York, on the ~~4th~~ 5th day of March, 1968, at 10:00 a.m., or as soon thereafter as counsel may be heard, why an order should not issue or the court take such other action as shall grant the plaintiffs herein the following relief:

1. A preliminary injunction enjoining the defendants, their agents, employees and attorneys and all persons in active concert and participation with them from:

   (1) refusing to pay the named plaintiffs herein their regular public assistance grants, to wit, semi-monthly payments in the amounts indicated: Ruby Sheafe, $52, and Esther Lett, $72; and

(2) suspending or terminating aid to any recipient of public assistance without giving advance written notice stating the reason for such action and without affording such recipient an opportunity for a due process hearing prior to withdrawal of aid.

2. The convening of a statutory court of three judges for the purpose of hearing and determining this application for a preliminary injunction and this cause, in accordance with the provisions of Title 28 United States Code Sections 2281 and 2284.

3. An order determining that this action may properly proceed as a class action pursuant to Rules 23(a) and 23(b)(2) of the Federal Rules of Civil Procedure.

Let the defendants further show cause why a temporary restraining order pursuant to Title 28 United States Code Section 2284 should not issue restraining the defendants, their agents, employees and attorneys and all persons in active concert and participation with them from

(1) refusing to pay the named plaintiffs herein their regular public assistance grants, to wit, semi-monthly payments in the amounts indicated: Ruby Sheafe, $52, and Esther Lett, $72; and

(2) terminating aid to any recipient of public assistance without giving advance written notice stating the reason for such action and without affording such recipient an opportunity for a hearing prior to withdrawal of aid,

pending the hearing and determination of plaintiffs' motion for a preliminary injunction by a three-judge court convened pursuant to Title 28 United States Code Sections 2281 and 2284.

Plaintiffs seek this temporary restraining order, preliminary injunction, and other relief on the grounds that:

1. They are each suffering, or threatened with imminent suffering of, irreparable injury in that they are without means to provide for themselves the basic necessities of food, clothing and shelter and will continue to suffer even greater deprivation until they are restored to full public assistance,
2. The issuance of a temporary restraining order and preliminary injunction will not cause undue inconvenience or loss to the defendants but will prevent irreparable injury to the plaintiffs,
3. The statutes and regulations which deny plaintiffs a hearing prior to termination or suspension of public assistance violate plaintiffs' right under the Fourteenth Amendment to the Constitution of the United States, and

4. Plaintiffs have no adequate remedy at law, as set forth more fully in the verified complaint and the affidavits of Richard Kwasnik (two affidavits), Esther Lett, David Gilman, attached hereto, as well as the affidavit of Edward V. Sparer submitted in Kelly, et al., v. Wyman, et. al., Civil Action No. 394/68, a copy of which is attached hereto.

~~IT IS ORDERED that defendant Goldberg,~~ in order ~~to~~ preserve the status quo pending hearing of plaintiffs' motion for temporary restraining order pursuant to 28 U.S.C. §2284 (pending the determination of this cause by a three-judge court), restore plaintiffs Ruby Sheafe and Esther Lett to the public assistance rolls and continue their regular assistance grants and in particular deliver to them ~~on March~~ 1 their regular assistance check.

IT IS FURTHER ORDERED that service of this Order on defendants on or before 5 on the 29 day of February, 1968, be deemed sufficient.

IT IS FURTHER ORDERED that service of this order may be made by any of the attorneys for plaintiffs in this action.

Done and ordered at the United States Courthouse, Foley Square, New York, New York, this 29 day of February, 1968, at 4.00 o'clock

John M. Cannella
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

- -x

JOHN KELLY, et al.,	:	
Plaintiffs	:	68 Civ. 394
v.	:	A F F I D A V I T
GEORGE K. WYMAN, et al.,	:	
Defendants	:	

- -x

- -x

RUBY SHEAFE, et al.,	:	
Plaintiffs	:	
v.	:	
GEORGE K. WYMAN, et al.,	:	
Defendants	:	

- -x

STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

JACK R. GOLDBERG, being duly sworn, deposes and says:

I am the Commissioner of Social Services of the City of New York and one of the defendants in this action. I submit this affidavit to apprise the Court of the present status of New York State Department of Social Services Regulation 351.26. Regulation 351.26, which was effective March 1, 1968 and which could not be implemented for reasons already submitted to this Court, was repealed by the New York State Department of Social Services on April 26, 1968 and a new Regulation 351.26 was promulgated in place thereof. A copy of the new regulation is annexed to these papers and marked Exhibit "A".

In accordance with the option contained in the new Regulation we promptly submitted to the New York State Department of Social Services for its review and approval, a proposed local procedure concerning discon-

tinuance or suspension of grants of public assistance. A copy of the procedure is annexed hereto as Exhibit "B".

On or about May 6, 1968, my office received a letter dated May 1, 1968 from the State Department of Social Services informing us that our local procedure was approved effective May 1, 1968. A copy of that letter is annexed as Exhibit "C".

It is my intention to implement the new Regulation by placing the newly approved procedure into operation at the earliest possible moment. Even assuming that we will not encounter any opposition from Local 371, A.F.S.C.M.E., AFL-CIO, which organization has a labor contract covering the employees who will be designated to serve as review officers, I would estimate that approximately three weeks will be required before the new procedure can become fully operational. Under the Regulation the review officers must occupy positions superior to those of the supervisors who approved the proposed discontinuances or suspensions of public assistance. In order to obtain the best qualified personnel for this task, we will have to draw upon the limited number of supervisory employees in the higher category and train them to perform the function required under the procedure. Their replacements will also have to be trained to assume the duties and responsibilities of the positions left by the designated review officers to prevent serious disruption and dislocations in the on-going operations of the Department. I intend to accelerate every effort toward the effective achievement of the goal of making the new procedure operational as soon as possible.

Sworn to before me this

8 day of May, 1968

JACK R. GOLDBERG, Ed.D

MILTON L. PLATT
NOTARY PUBLIC, STATE OF NEW YORK
No. 24-3116220
Qualified in Kings County
Commission Expires March 30, 1969

STATE DEPARTMENT OF SOCIAL SERVICES

ALBANY, NEW YORK

Pursuant to the provisions of sections 20 and 34 of the Social Services Law, I, George K. Wyman, Commissioner of Social Services, do hereby amend in part, as hereinafter indicated, Part 351 of Article 1 of Subchapter B of the Official Regulations of the State Department of Social Services, being Chapter II of Title 18 NYCRR, effective immediately upon filing with the Secretary of State.

Section 351.26 is hereby REPEALED and a new section to be section 351.26 is hereby added to read as follows:

351.26. Proposed discontinuance or suspension of grant; prior notice to recipient; additional local review and subsequent determination. When a social services official proposes to discontinue or suspend a grant of public assistance he shall proceed in accordance with the provisions of either subdivision (a) or (b) below:

(a) He shall notify the recipient in writing of his intention to discontinue or suspend the grant at least seven days prior to the proposed effective date of the discontinuance or suspension, together with the reasons for his intended action, unless such discontinuance or suspension is in response to the request of the recipient or is due to; the death of the recipient who is an unattached person; the recipient's admission to an institution

"A"

wherein his assistance may not be continued; the recipient's whereabouts being unknown to the social services official because the recipient moved from his last known address without notifying the social services official and without leaving a forwarding address; the recipient's moving from the state and establishing his permanent home elsewhere; the recipient's case having been reclassified as to category. Such notification shall further advise the recipient that if he makes a request therefor he will be afforded an opportunity to appear at the time and place indicated in the notice before the person identified therein who will review his case with him and will afford him opportunity to present such written and oral relavent evidence and reasons as the recipient may have to demonstrate why his grant should not be discontinued or suspended, and that the recipient may appear and present such evidence and reasons on his behalf with or without the assistance of an attorney or other representative. Only the social services official or an employee of his social services department who occupies a position superior to that of the supervisor who approved the proposed discontinuance or suspension shall be designated to make such a review. When a recipient requests such a review the designated person shall, at the time and place indicated in the notice to the recipient, review with the recipient and his representative, if any, the evidence and reasons supporting the proposed action and shall thereupon afford the recipient opportunity to present relevant evidence and to state reasons why the proposed discontinuance or suspension should not be made. When such a review has been made by a designated employee, such employee shall promptly make an appropriate written recommendation to the social services official, together with his reasons therefor, including reference to applicable provisions of law, Board rules, Department regulations, and approved local policy. After such a review the social services official shall expeditiously determine whether the proposed discontinuance or suspension shall or shall not be made effective as proposed,

"A"

after considering all the evidence before him and the recommendation, if any of the employee designated by him to review the proposed action with the recipient. The social services official shall then promptly send an appropriate written notice of his decision to the recipient and his representative, if any, and to the Department's area office. Assistance shall not be discontinued or suspended prior to the date such notice of decision is sent to the recipient and his representative, if any, or prior to the proposed effective date of discontinuance or suspension, whichever occurs later.

(b) A social services official may adopt a local procedure concerning discontinuance or suspension of grants of public assistance and submit to the Department such procedure for its approval. Upon approval such local procedure shall become effective. Such local procedure must include the following:

(1) Notice to the recipient of proposed discontinuance or suspension of the grant at least seven days prior to the proposed effective date of the discontinuance or suspension, together with the reasons for the intended action, unless such discontinuance or suspension is in response to the request of the recipient or is due to: the death of the recipient who is an unattached person; the recipient's admission to an institution wherein his assistance may not be continued; the recipient's whereabouts being unknown to the social services official because the recipient moved from his last known address without notifying the social services official and without leaving a forwarding address; the recipient's moving from the state and establishing his permanent home elsewhere; the recipient's case having been reclassified as to category.

(2) The notice must advise the recipient that, if he so requests, the proposed discontinuance or suspension will be reviewed and he may submit in writing a statement or other evidence to demonstrate why his grant should not be discontinued or suspended.

"A"

(3) A review of the proposed discontinuance or suspension shall be made by the social services official or an employee of his social services department who occupies a position superior to that of the supervisor who approved the proposed discontinuance or suspension.

(4) After review of the relevant materials in the recipient's file including any written material submitted by him the decision shall be made expeditiously as to whether the proposed discontinuance or suspension shall or shall not be made effective as proposed. Appropriate written notice of the decision shall be sent to the recipient and to the Department's area office. Assistance shall not be discontinued or suspended prior to the date such notice of decision is sent to the recipient and his representative, if any, or prior to the proposed effective date of discontinuance or suspension, whichever occurs later.

Date: April 26, 1968 Signed: George K. Wyman
COMMISSIONER

This is to certify that this is the original of an order of the State Department of Social Services, made on April 26, 1968, amending in part, Section 351.26 of the Official Regulations of the State Department of Social Services, being Chapter II of Title 18, NYCRR.

Date: April 26, 1968 Signed: George K. Wyman
COMMISSIONER

"A"

(w copy as corrected 5/8/68

THE CITY OF NEW YORK
DEPARTMENT OF SOCIAL SERVICES

SUBJECT: CLIENTS' RIGHT OF REVIEW IN CASES OF PROPOSED SUSPENSION OR DISCONTINUANCE OF ASSISTANCE	PROCEDURE NO. 68-
	April 26, 1968
TO: Administrative Group Case Unit	Classification 34
	Supplements P 68- (34)

Distribution: C. Effective: Immediately

I. INTRODUCTION

A. Purpose: With the approval of the State Department of Social Services this procedure implements the new State policy which insures that the clients' rights are protected in cases where it is proposed that assistance be suspended or discontinued. This new policy in no way limits the clients' right to request a Fair Hearing, in accordance with existing policy, and requires that assistance be continued until completion of the administrative review.

B. Program:

1. The State Department of Social Services has promulgated a new regulation which assures the client of the opportunity for a Department review by an employee who occupies a position superior to that of the employee who approved the proposed discontinuance or suspension of assistance. For purposes of this procedure, this employee shall be defined as the Review Officer.

2. In situations, other than those listed below, notification must be sent to the client of the intent to suspend or discontinue assistance 7 days prior to the planned effective date of such action.

   a. death of unattached person
   b. admitted to institution (mental, penal, correctional, etc.)
   c. client's request for discontinuance of assistance
   d. client's whereabouts unknown and there is no forwarding address
   e. client has left the State permanently
   f. reclassification as to category

"B"

3. Upon receipt of information that the client requests an administrative review, the case shall be forwarded to the Review Officer along with all written material submitted by the client.

4. The Review Officer shall review the case record, the recommendations of the case unit and the written material, if any, submitted by the client with his request for a review.

5. After such review, the Review Officer shall make an appropriate written determination as to whether or not assistance shall be discontinued, detailing the relevant facts and including all evidence submitted at the time of the review, as well as any reference to applicable provisions of the Social Service Law, Board Rules and Regulations of the State Department of Social Service and approved local policy.

6. Based on the determination of the Review Officer, the case unit shall take appropriate action (to close or continue assistance) and notify the client of the recommendation by means of the appropriate letter.

C.

Forms Used	Title	Origin
X	Notice of Intent to Suspend or Discontinue Assistance	Case Unit
V	Notice of Decision to Continue Assistance	Case Unit
M-3h (Rev.)	Notice of Discontinuance of Public Assistance	Case Unit
Form M3x (new)	Notice of Discontinuance of PA - After Review	

II. DETAILED INSTRUCTIONS

Caseworker 1. Records, in detail, discussion with the client and the reasons for the proposed suspension or discontinuance of assistance, including the appropriate closing code.

2. Prepares Form X, "Notice of Intent to Suspend or Discontinue Assistance", in triplicate. Makes appropriate case record entry.

NOTE: On Form X, the dates entered in paragraph 1 and 2 shall be identical.

"B"

Caseworker (cont'd.)

3. Forwards case record and all copies of Form X, together with a return envelope identified with caseload number, to Unit Supervisor.

Unit Supervisor

4. Reviews case record and Form X. If in agreement, signs case record entry and Form X. Controls Forms X and date of their return on separate Form W-708, headed "Proposed Suspension or Discontinuance of Assistance".

"

5. Reviews Form W-708 daily. If client fails to respond to Form X within the time provided or indicates agreement to have his case closed, instructs caseworker to prepare the necessary forms for closing action in accordance with current procedure.

"

6. If the client requests a review, makes appropriate entry on Form W-708; forwards the case record with any written documents, relevant to the proposed action, submitted by the client, to the Review Officer.

NOTE: The case unit is responsible for all service to the client pending the review and receipt of the determination from the Review Officer to either close the case or continue assistance.

Review Officer

7. Reviews the case record and written material, if any, submitted by the client. Prepares a memorandum, in quadruplicate, of the relevant facts and his determination to continue or discontinue assistance, including any reference to applicable provisions of the Social Services Law, Board Rules and Regulations of the State Department of Social Services, and approved local policy.

"

8. Forwards the original copy of memorandum as part of the case record, to the appropriate case unit; forwards two copies one for the Commissioner' file and one for the State Area Office to the Fair Hearings Section, C.O. through the Director's Office; retains fourth copy for own record.

Unit Supervisor

9. On receipt of determination of the Review Officer, makes appropriate entry on Form W-708. Forwards case record and all material to the caseworker for appropriate action and controls to insure prompt action.

Caseworker

10. Takes appropriate action to continue or discontinue assistance; prepares appropriate letter to client with a copy to his attorney or representative, if any, and a duplicate ~~in duplicate with one~~ copy to be retained in case record; makes case entry detailing action taken; prepares required forms to carry out appropriate action in accordance with current procedure.

"B"

Form X (Prepare in duplicate)
(Spanish on Reverse Side)

THE CITY OF NEW YORK
DEPARTMENT OF SOCIAL SERVICES
Center:
Address:

Notice of Intent to Suspend or Discontinue Assistance

_____ _____

_____
Case Number

_____ _____

This is to advise you that this Department intends to DISCONTINUE/SUSPEND your public assistance grant on _____, for the following reasons:

If you feel that your public assistance grant should not be suspended or discontinued, you may request a review of your record on or before _____. You may also submit any statement or document which may establish your need for public assistance. You have the right ~~to consult with an attorney or any representative you want in the preparation of whatever written material you wish~~ to submit this written material through an attorney or any representative of your choosing.

If you wish a review, please mark an X in box #1, below. If you do not wish a review, please mark an X in box #2, below. If you fail to reply, we will assume that you agree with the action the Department proposes to take.

Box #1 I REQUEST A REVIEW ☐ Box #2 I DO NOT REQUEST A REVIEW ☐

Please return a copy of this letter in the enclosed self-addressed envelope and keep the other copy of this letter for your records.

If, after this review, you are still dissatisfied with the decision given you, you may request, orally or in writing, a Fair Hearing by communicating with the State Department of Social Services at 270 Broadway, New York, N.Y. 10007.

_____ _____ _____
Unit Supervisor Caseload Number Date

"B"

Form V
Prepare in Duplicate

DEPARTMENT OF SOCIAL SERVICES
Center:
Address:

Notice to Client of Decision to Continue Assistance

Case Number

Fold

After careful consideration of all the factors and documents you presented, we are in agreement that you are still eligible to receive public assistance.

Please inform your caseworker of any change in your circumstances that affects your need for assistance.

Unit Supervisor | Caseload Number | Date

"B"

orm M-3h (face)
ev. 4/29/68
repare in Duplicate

THE CITY OF NEW YORK
DEPARTMENT OF SOCIAL SERVICES
Center:
Address:

NOTICE OF DISCONTINUANCE OF PUBLIC ASSISTANCE

Case Number

Our investigation shows that effective immediately you are not eligible to receive

for the following reasons:

You may wish to review the pamphlet which was given to you at the time of your application. It explains the provisions under which this type of public assistance is granted and your rights with respect to review of this decision.

If you are dissatisfied with this decision you may request in writing or orally a Fair Hearing by communicating with the State Department of Social Services, 270 Broadway, N.Y., N.Y. 10007, Telephone Number 488-6550.

You will soon receive information concerning your eligibility for continued assistance under the Medical Assistance Program as provided by the New York State Medicaid Program.

"B"

Form M-3x
(Prepare in Duplicate)

THE CITY OF NEW YORK
DEPARTMENT OF SOCIAL SERVICES
Center:
Address:

NOTICE OF DISCONTINUANCE OF PUBLIC ASSISTANCE AFTER REVIEW

____ ____

_____
Case Number

____ ____

Fol

After careful consideration of all the factors and documents you presented, it has been decided that effective immediately you are not eligible to receive _____ for the following reasons:

You may wish to review the pamphlet which was given to you at the time of your application. It explains the provisions under which this type of public assistance is granted and your rights with respect to review of this decision.

If you are dissatisfied with this decision you may request in writing or orally a Fair Hearing by communicating with the State Department of Social Services, 270 Broadway, N.Y., N.Y. 10007, Telephone Number 488-6550.

You will soon receive information concerning your eligibility for continued assistance under the Medical Assistance Program as provided by the New York State Medicaid Program.

Unit Supervisor Date Caseload No.

"B"

STATE OF NEW YORK
DEPARTMENT OF SOCIAL WELFARE
NEW YORK CITY OFFICE
250 BROADWAY
NEW YORK, N. Y. 10007

GEORGE K. WYMAN
COMMISSIONER
JOSEPH H. LOUCHHEIM
DEPUTY COMMISSIONER

TELEPHONE
BARCLAY 7-1616

May 1, 1968

Honorable Jack R. Goldberg, Commissioner
New York City Dept. of Social Services
250 Church Street
New York, N. Y. 10013

Dear Commissioner Goldberg:

This office has reviewed your Department's proposed local procedure concerning discontinuance or suspension of grants of public assistance.

It has been determined that this proposed local procedure embodies the provisions of Paragraph 2 of Department Regulation Section 351.26, and therefore your local procedure is approved effective this date.

Sincerely yours,

Joseph H. Louchheim
Deputy Commissioner

5/6/68 cc: Comr. Costa
Comr. Moncure
Mr. Felder
Miss Lally
Mr. Meyer
Mr. Petrocelli
Mr. Porteus

RECEIVED
MAY 7 1968
BUREAU OF RESOURCES
AND LEGAL SERVICES

"C"

The Columbia University School of Social Work | 401 West 117th Street
New York, N. Y. 10027
CENTER ON SOCIAL WELFARE POLICY AND LAW
Legal Activities and Research Division

MEMORANDUM

May 16, 1968

TO: David Diamond, Esq.
Martin Garbus, Esq.
David Gilman, Esq.
Carol Katz, Esq.
Richard Kwasnik, Esq.
Stephen Nagler, Esq.
Roger Wolf, Esq.

FROM: Henry A. Freedman

RE: Prior Hearing Decision

The enclosed decision invalidating California's prior hearing procedure, obtained after Wheeler, should be of great interest.

HAF:dl
Enclosure

Dith.

ORIGINAL
FILED

APR 19 1968

CLERK, U. S. DIST. COURT
SAN FRANCISCO

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

MAE WHEELER, individually and on behalf of all others similarly situated, Plaintiffs, vs. JOHN MONTGOMERY, et al., Defendants.	No. 48303

MEMORANDUM OPINION AND
ORDER DISMISSING ACTION

This is an action for declaratory and injunctive relief. The facts concerning the named plaintiff -- Mae Wheeler -- are essentially as follows: The county welfare agency received a phone call which informed the county that Mrs. Wheeler had received the proceeds of her deceased son's insurance policy and had transferred the money to her grandson. The county determined that Mrs. Wheeler was therefore ineligible for continued welfare (Old Age Security [O.A.S.]) assistance and terminated her aid without affording her a hearing on the alleged facts prior to termination. On December 20, 1967, Judge Alfonso J. Zirpoli, the single judge to whom the application for a temporary restraining order was originally addressed, signed his memorandum opinion and entered various orders. He found the action to

necessitate the convening of a three judge court and found a class action appropriate.

The parties have submitted extensive briefs and exhibits and the matter was submitted to the three judges on April 12, 1968, following oral argument.

With respect to the named plaintiff -- Mae Wheeler -- she has now been afforded a "fair hearing" and has been found eligible for continued O.A.S. assistance. Furthermore, the claim originally pressed by plaintiff -- that at least <u>some</u> hearing <u>prior</u> to the termination of O.A.S. was constitutionally compelled -- has now been conceded by defendants. The State of California, subsequent to Judge Zirpoli's order of December 20, has adopted new regulations which do provide for what plaintiff terms an "informal conference" with the recipient (whose aid the county is about to terminate) and the county agency which is about to make the determination that the recipient is no longer eligible for aid. 1/

1/ Reg. 44-325.43 (effective April 1, 1968), as set forth in CALIFORNIA STATE DEPARTMENT OF SOCIAL WELFARE MANUAL, provides as follows:

44-325.43 <u>Notification . . .</u>

> The recipient, the parent or other person responsible for the child in AFDC, shall be notified, in writing, immediately upon the initial decision being made to withhold a warrant beyond its usual delivery date for any reason other than death, and in no case less than three (3) mail delivery days prior to the usual delivery date of the warrant to the recipient. The county shall give such notice as it has reason to believe will be effective including, if necessary, a home call by appropriate personnel. Form ABCD 239, Notice of Action, or a substitute form, may be used for this purpose. Every notification shall include:
>
> .431 A statement setting forth the proposed action and the grounds therefor, together with what information, if any, is needed or action required to reestablish eligibility or to determine a correct grant.
>
> .432 Assurance that prompt investigation is being made; that the withheld warrant will be

Therefore, the only issue remaining before this court is that raised by the class action which contends that the newly adopted regulations are constitutionally inadequate to afford due process at the pre-termination conference. The class contends that the regulations are insufficient in five respects: (1) the conference is with a county official of the agency which has already determined the question of eligibility rather than before an "impartial" referee; (2)the three day notice requirement is too short; (3) no transcript is required to be made or furnished and the decision is not specifically required to be made only on the evidence presented at the conference; (4) the burden of proof is on the recipient to establish eligibility and not on the county to establish ineligibility, and (5) confrontation and cross-examination are not required.

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delivered as soon as there is eligibility to receive it; and that the evidence or other information which brought about the withholding action will be freely discussed with the recipient, parent, or other person, if he so desires (see Section .434 below).

.433 A statement of whether, if aid is withheld, the recipient will or will not continue to be certified for medical assistance during the month aid is withheld.

.434 A statement that the recipient, parent, or other person may have the opportunity to meet with his caseworker, an eligibility worker, or another responsible person in the county department, at a specified time, or during a given time period which shall not exceed three (3) working days, and the last day of which shall be at least one (1) day prior to the usual delivery date of the warrant, and at a place specifically designated in order to enable the recipient, parent, or other person:

(a) To learn the nature and extent of the information on which the withholding action is based;

(b) To provide any explanation or information including, but not limited to that

The constitutionality of the "informal conference" must be determined in light of the fact that even if aid is terminated, the State of California must provide the recipient with the kind of hearing plaintiff seeks. 2/ At present such "fair hearing" is required to be given within 45 days 3/ and a decision rendered within the next 75 days. 4/ As of July 1, 1968, the hearing and decision will be required to be made within 60 days. 5/

The court finds that the present California regulations (see note 1) do comport with the due process clause of the fourteenth amendment to the United States Constitution. The State of California having given Mae Wheeler, the named plaintiff, a fair hearing in which she has been found eligible for O.A.S., and having adopted regulations which assure all within the class due process before termination,

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described in the notification pursuant to Section .431 above;

(c) To discuss the entire matter informally for purposes of clarification and, where possible, resolution.

2/ CAL. WELF. & INST. CODE §§ 10950-10965.

3/ CAL. WELF. & INST. CODE § 10952.

4/ CAL. WELF. & INST. CODE § 10958.

5/ HANDBOOK OF PUBLIC ASSISTANCE ADMINISTRATION § 6200(j), as set forth in Handbook Transmittal No. 140 (attached to Defendants' Trial Brief as Exh. B), provides as follows:

6200. Requirements for State Plans

. . .

(j) Prompt, definitive, and final administrative action will be taken within 60 days from the date of the request for a fair hearing. The claimant will be notified of the decision, in writing, in the name of the State agency and, to the extent it is available to him, of his right to judicial review.

the purpose of this action has been achieved and this proceeding may, with propriety, now be dismissed.

It is SO ORDERED.

Dated: April 17, 1968

O. D. HAMLIN
United States Circuit Judge

ALBERT C. WOLLENBERG
United States District Judge

ALFONSO J. ZIRPOLI
United States District Judge

ENDORSED
FILED
MAY - 2 1968
JACK G. BLUE, County Clerk
Thomas E. Donato, Deputy

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

MARY McCULLOUGH, MELVIN McCULLOUGH, MICHAEL JOHNSON and ROSALINE JOHNSON, by their Guardian Ad Litem MARY McCULLOUGH, individually and on behalf of all persons receiving Public Assistance under the Categorical Aid Programs in the State of California, Petitioners, vs HRAYR TERZIAN, Director of the Alameda County Welfare Department, JOHN MONTGOMERY, Director of the Department of Social Welfare of the State of California, Respondents.	No. 379011 JUDGMENT

This matter came on for hearing before Department One of the above-entitled court, Honorable LEWIS E. LERCARA presiding, on April 25, 1968. Petitioners having filed their petition for writ of mandate and complaint for declaratory relief, appeared by DAVID NAWI of the Legal Aid Society of Alameda County. Respondent JOHN MONTGOMERY, Director of the State Department of Social Welfare, and HRAYR TERZIAN, Director of the Alameda County Welfare Department, appeared by ELIZABETH PALMER, Deputy Attorney General and BEN H. ZUPPAN, Deputy County Counsel. A Stipulation of Facts having been filed, arguments having been presented and the matter having been submitted for decision, and the Court having made Findings of Fact and Conclusions of Law, which have been

signed and filed,

IT IS ORDERED THAT:

A Peremptory Writ of Mandate shall issue from this Court commanding respondents JOHN MONTGOMERY, Director of the State Department of Social Welfare, and HRAYR TERZIAN, Director of the Alameda County Welfare Department, and each of them to set aside and reconsider their action withdrawing aid under the Aid to Families with Dependent Children (AFDC) program from petitioners MARY McCULLOUGH, MELVIN McCULLOUGH, MICHAEL JOHNSON and ROSALINE JOHNSON in light of this Court's Findings of Fact and Conclusions of Law and to:

1. Provide said petitioners with the assistance to which they are otherwise entitled without regard to any adjustment required by or based on the determination of the Alameda County Welfare Department that a man is or was living in the home of petitioners;

2. Provide the fair hearing and decision requested by said petitioners pursuant to the provisions of Section 10950 et seq. of the W & I Code within thirty days hereof;

3. Provide said aid as of April 1, 1968 and continue to provide said aid until such time that a determination of any ineligibility is rendered pursuant to said hearing, provided that respondents may require petitioner MARY McCULLOUGH to complete an affirmation of eligibility form CA-201 as a condition of the continuation of said payments.

IT IS DECLARED THAT:

Section 44-325 of the State Department of Social Welfare, Public Social Services Manual before and as amended effective April 1, 1968 is invalid because and to the extent that it does not provide a hearing with adequate procedural safeguards including a decision based solely on the evidence produced at the hearing and

rendered by an impartial person or body not previously connected with the case, prior to the withdrawal or termination of public assistance benefits under the Aid to Families with Dependent Children, Old Age Security, Aid to Needy Disabled and Aid to Blind programs as required by State law and United States and California Constitutions.

IT IS FURTHER ORDERED THAT a peremptory writ of mandate shal issue from this court commanding respondent JOHN MONTGOMERY, Director of the State Department of Social Welfare to:

Restore or continue to provide the public assistance benefit to which recipients are otherwise entitled under the AFDC, Old Age Security, Aid to Disabled and Aid to Blind programs, whose benefits will be or have been terminated under said programs until a decision if any of ineligibility is rendered after a hearing provided by W & I Code section 10950 et seq. or the equivalent thereof;

LEL

Provided that no public assistance benefits under said programs may be terminated or withheld without the advance written notice required by Public Social Services Manual section 44-325.43

Provided further that to be eligible for the relief afforde herein the affected recipients must file with the State Department of Social Welfare a request for a fair hearing provided by W & I Code section 10950 et seq. and that such recipients must file with the County Department administering aid a sworn statement in writing which controverts the essential allegations of ineligibili and which includes a statement of all current income and resource the aid shall be restored from the date of filing of the request for fair hearing, or the date of filing the above-described statement with the County Department, whichever shall be later;

Provided further that any recipient whose aid has already been withheld or terminated prior to the date hereof and who has not received a fair hearing decision or who is eligible for a

fair hearing under the law may file the statement above-described with the County Department and the request for fair hearing and thereupon shall be restored to aid as above provided.

DATED: [illegible].

Judge of the Superior Court

D R A F T

Deposition of Review Officers

Name

Title

Length of service with department

Lentgh of service in current position

Previous positions with department, nature of work in each position, and length of service in each

Nature of work in current position

Have you engaged in suspension or termination of aid?

What were some reasons for termination?

Have you participated in a suspension or termination for noncooperation?
failure to explain resources?
man in the house?
child out of the house?

What was the procedure you used up to a couple of months ago, say March or April?

Who made the decision?

Was the case supervisor ever consulted? [NO]

Did recipients ever come to your center to protest their termination or suspension?

Were they ever accompanied by other recipients or members of an organization?

Has a suspension termination ever been reversed?

If so, was it done on the sole request of the recipient?

Describe the facts and the basis for reversal in the five most recent cases of which you are aware.

Have you ever received a request from your superiors to review a termination?

What happened?

When did you become aware that there was to be a new review procedure?

How did you find out about it?

Did you ask to become a review officer?

Do you devote full time to your review functions?

How much of your time do you devote?

Did you undergo any training for your review function?

Where was the training given?

How much time did it consume?

Who was in your class--how many?

Who conducted the training sessions?

Were you given any written material?

What?

May I see it [subpoena was issued].

Was anything said during the training sessions about

1) the reasons for the review procedure;

2) the number of cases likely to be reviewed;

3) how a case is to be processed before it comes to you;

   a) notice to client--copy to you;

   b) client's request & documents--come straight to you;

   c) case record - at what point sent to you;

4) What do you look at to make decision?

5) What are you to do if something in the case record is not clear?

6) Who will see or use your written reasoned decision?

May I see your notes from the training sessions [SUBPOENA]?

How many reviews have you conducted so far?

Have you reversed any suspensions or terminations?

What were the facts in each case?

Set out in detail the steps you took from beginning to end.

How did you establish that those were the facts?

What documents, if any, did the recipient submit?

Were any recipients represented by counsel?

By other representatives?

Would you object to turning your written decision over to a recipient?

His representative?

His attorney?

Do you think you could review the case better if the recipient came in to talk with you?

Along with a lawyer or representative?

Have you, in your present capacity, ever had a conference with a recipient?

Do you make the final decisions on review?

May I see copies of all your final decisions, with names excised for confidentiality [SUBPOENA]?

May I see copies of all notices sent to recipients advising them of suspension or termination?
Which have been forwarded to you in your position as reviewer [SUBPOENA]?

Have any of your decisions been appealed to a fair hearing?

If the issue is earnings, is the easiest way to resolve the matter a telephone call to the employer?

If you are troubled about the meaning of a regulation, can you receive aid from the center administration or downtown?

Have any of your old duties been taken over now that you are responsible for review?

Have any new case supervisor positions been created at your center?

Do you get paid for overtime?

Have you earned any overtime during the past month?

Was your review function a factor?

Are you a member of the State, County & Municipal Employees Union or any other professional organization?

Has the Union taken any position on this review? Has the other organization?

Have you discussed any of your cases with a fellow review officer?

From your past experience, how many terminations are erroneous and were, or should have been, reversed?

Have you been given any forms for reporting your decisions?

Have you been given any other forms for statistical or other purposes?

Are you scheduled to have any conferences with your superiors or other reviewers?

Kelly v. Wyman

Current Plans

1. Interrogatories to state and city re statistics - D. Diamond

   Preliminary information from D. Gilman

2. Depositions of Reviewers

   Questions by H. Freedman
   List of reviewers from D. Gilman and S. Nagler, with recommendations re who to depose

3. Depositions re Fair Hearing - L. Albert

4. Intervention of new plaintiffs - H. Freedman

   Each of the above to be drafted and circulated as quickly as possible

5. Development of Evidence re Suffering - D. Diamond

3 copies

Move in summary to reopen

Herbert C. Rahe
Office of Ed
Temp 5, Rm 2303
Washington 25, D.C.

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

NO. 22527

DEREK JEROME SINGLETON, Minor,
by Mrs. Edna Marie Singleton,
His Mother and Next friend, ET AL,

Appellants,

versus

JACKSON MUNICIPAL SEPARATE SCHOOL
DISTRICT, ET AL,

Appellees.

Appeal from the United States District
Court for the Southern District
of Mississippi

Before HUTCHESON, BROWN and WISDOM,
Circuit Judges

BY THE COURT:-

IT IS ORDERED that the motion of the United States for leave to intervene as a party appellant in the above numbered and entitled cause be, and the same is hereby GRANTED.

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

NO. 22,527

DEREK JEROME SINGLETON, Minor, by MRS. EDNA MARIE SINGLETON, his mother and next friend, et al.,

Appellants,

v.

JACKSON MUNICIPAL SEPARATE SCHOOL DISTRICT, et al.,

Appellees.

Appeal from the United States District Court for the Southern District of Mississippi.

(JUNE 22, 1965)

Before HUTCHESON, BROWN, and WISDOM, Circuit Judges.

WISDOM, Circuit Judge:

The time has come for foot-dragging public school boards to move with celerity toward desegregation. 1/ Since May 17, 1954, public school

boards throughout the country have known that they must desegregate their schools. 2/ And as the law moved with rising tempo to meet changing conditions, school boards might have foreseen that further delays would pile up rather than spread their nettlesome problems. This Court has urged school authorities to grasp the nettle now. We have put them on notice that, "The Rule has become: the later the start, the shorter the time allowed for transition". 3/

The leavening principle that schools shall be desegregated with "all deliberate speed" was not based on the degree of community hostility to the change: "the vitality of these constitutional principles", the Supreme Court remarked in Brown, "cannot be allowed to yield simply because of disagreement with them". 4/ It was based on the administrative problems in making the transition from a segregated to an integrated system. 5/ A slow-down now will only multiply a school board's administrative difficulties.

The United States Office of Education, Department of Health, Education and Welfare, has fixed minimum standards to be used in determining the qualifications for schools applying for federal financial aid. 6/ "The fall of 1967 is set as the target date for the extension of desegregation to all grades of school systems not fully desegregated in 1965-1966 as a qualification for Federal financial assistance"; 7/ a good faith start requires designation of at least four grades for the 1965-1966 school year. 8/

We attach great weight to the standards established by the Office of Education. The judiciary has of course functions and duties distinct from those of the executive department, but in carrying out a national policy we have the same objective. There should be a close correlation, therefore, between the judiciary's

standards in enforcing the national policy requiring desegregation of public schools and the executive department's standards in administering this policy. Absent legal questions, the United States Office of Education is better qualified than the courts and is the more appropriate federal body to weigh administrative difficulties inherent in school desegregation plans. If in some district courts judicial guides for approval of a school desegregation plan are more acceptable to the community or substantially less burdensome than H.E.W. guides, school boards may turn to the federal courts as a means of circumventing the H.E.W. requirements for financial aid. Instead of a uniform policy relatively easy to administer, both the courts and the Office of Education would have to struggle with individual school systems on ad hoc basis. If judicial standards are lower, recalcitrant school boards in effect will receive a premium for recalcitrance; the more the intransigence, the bigger the bonus.

In view of the need for immediate relief if Negro children in Jackson are to receive the benefit of the Office of Education's 1967 target date for total public school desegregation, the appellant's motion for injunctive relief pending appeal is granted with directions that the district court order the appellee School District to submit promptly a plan of desegregation extending to at least four grades for the year 1965-1966. In redrawing the plan the appellee should bear in mind that decisions of this Court have directed that desegregation of public schools should extend concurrently from the lower grades up and from the higher grades down. 9/ As to details of the plan, the Board should be guided by the standards and policies announced by the United States Office of Education in establishing standards for compliance with the requirements of Title VI of the Civil Rights Act of 1964.

If Selma, Alabama, can commence with desegregation of four grades for 1965-1966, Jackson, Mississippi, can at least catch up. 10/ And indeed in all but the most exceptional cases, all school districts commencing desegregation in fall 1965 should be expected to do as well.

The mandate shall be issued forthwith.

DEREK JEROME SINGLETON, Minor, by
MRS. EDNA MARIE SINGLETON, his mother
and next friend, et al.
v.
JACKSON MUNICIPAL SEPARATE SCHOOL
DISTRICT, et al.
NO. 22,527

FOOTNOTES

1/ Appellants are Negroes who in March 1963 on behalf of their children seeking injunctive relief requiring the Jackson Municipal Separate School District to desegregate the public schools of Jackson, Mississippi. The district court dismissed the complaint on the notion that the Negro students had failed to utilize or exhaust available administrative remedies relating to the assignment of pupils to schools. We reversed with directions that the plaintiffs motion for injunctive relief be speedily heard and decided. Evers v. Jackson Municipal Separate School District, 5 Cir. 1964, 328 F.2d 408.

On remand, the district court, March 4, 1964, ordered the Board to file a desegregation plan by July 15, 1964, which would desegregate at least one grade by September 1964. At the trial in April 1964 the Board and white parents who had intervened offered voluminous testimony to support their contention that racial differences justified continued school segregation. The Court made final its March 4, 1964, order. The Board and the intervenors appealed. That appeal is now pending.

July 15, 1964, the Board filed a grade-a-year segregation plan offering "freedom of choice" type assignments to pupils entering the first grade in September 1964. After a hearing July 29, the district court "tentatively approved" the plan and recessed the

Cont'd - Footnotes

hearing until February 1965. The court below again approved the Board's plan as submitted. The appellants appealed.

On the Attorney General's certification that "this case is of general public importance", raising questions "which are bound to affect the resolution of desegregation controversies elsewhere in the State and throughout the South", the court granted leave to the United States to intervene.

2/ Brown v. Board of Education, 1954, 347 U. S. 483, 74 S. Ct. 686, 98 L. Ed. 873.

3/ Lockett v. Board of Education of Muskogee County School District, Georgia, 5 Cir. 1965, 342 F. 2d 225.

4/ Brown v. Board of Education of Topeka, 1954, 349 U. S. 294, 299, 75 S. Ct. 753, 99 L. Ed. 1083. (The second Brown opinion.)

5/ These "problems relat[e] to administration, arising from the physical condition of the school plant, the school transportation system, personnel, revision of school districts and attendance areas into compact units to achieve a system of determining admission to the public schools on a non-racial basis, and revision of local laws and regulations which may be necessary in solving the foregoing problems". Brown v. Board of Education of Topeka, 1954, 349 U. S. 294, 299, 75 S. Ct. 753, 99 L. Ed. 1083. In retrospect, the second Brown opinion clearly imposes on public school authorities the duty to provide an integrated school system. Judge Parker's well-known dictum ("The Constitution, in other words, does not require integration. It merely forbids discrimination".) in Briggs v. Elliott, E.D.S.C. 1955,

Cont'd - Footnotes

132 F.Supp. 776, 777, should be laid to rest. It is inconsistent with Brown and the later development of decisional and statutory law in the area of civil rights. This Court has come a long way from Avery v. Wichita Falls Ind. School District, 5 Cir. 1957, 241 F.2d 230, 233, cert. den'd, 353 U. S. 938 (1957) and Holland v. Board of Public Instruction, 5 Cir. 1958, 258 F.2d 730. Lockett (see footnote 3) traces the course this Circuit has taken in school segregation cases.

6/ General Statement of Policies Under Title VI of the Civil Rights Act of 1964 Respecting Desegregation of Elementary and Secondary School, United States Office of Education, Department of Health, Education, and Welfare, April 1965.

7/ Id.

8/ Id.

9/ This "afford[s] those students already in school some measure of desegregated education before graduation". Lockett v. Board of Education of Muskogee County School District, Georgia, 5 Cir. 1965, 342 F. 2d 225, 228.

10/ The Birmingham News, May 17, 1965, page 1; The New Orleans Times-Picayune, May 17, 1965, page 1.

MSS SEDFRE
546

SMITH, ARLENA, L. et al. VS AMERICAN LIBERTY INSURANCE CO. 1968
(APPEAL of EARLIER CASE)

Box 42
Folder 29

State Historical Society of Wisconsin

Please Retain Original Order

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

U. S. COURT OF APPEALS
FILED
MAR 25 1968
EDWARD W. WADSWORTH
CLERK

NO. 24926

AMERICAN LIBERTY INSURANCE COMPANY,

Appellant,

vs.

ARLENA L. SMITH, ET AL.,

Appellees.

Appeal from the United States DistrictCourt for the Southern District of Mississippi

Before GEWIN and COLEMAN, Circuit Judges, and HUGHES, District Judge.

BY THE COURT:

The request of the appellant, unopposed by appellees, for a continuance of this cause is hereby granted and therefore IT IS ORDERED that said cause be removed from the docket and continued. Said cause shall take its regular place among cases now pending in this Court and shall be reset for oral argument in the usual routine manner.

1

Smith File
Cos in Mississippi

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

NO. 24926

AMERICAN LIBERTY INSURANCE COMPANY,

Appellant,

versus

ARLENA L. SMITH, ET AL.,

Appellees.

Appeal from the United States District Court
for the Southern District of Mississippi.

MOTION OF APPELLANT TO DISMISS THE APPEAL

Comes now the appellant, American Liberty Insurance Company, and moves the court to dismiss with prejudice its appeal, as to the order appealed from, heretofore taken in the above-styled case, being Appeal No. 24926. Appellant offers to pay costs.

Paul W. Brock
Paul W. Brock

Harold D. Parkman by PB
Harold D. Parkman
Attorneys for American Liberty
Insurance Company

OF COUNSEL:

HAND, ARENDALL, BEDSOLE, GREAVES & JOHNSTON

CERTIFICATE OF SERVICE

I hereby certify that I have mailed a true and correct copy of the foregoing motion to:

James A. Walters, Esq., Attorney for Arlena L. Smith, Bobbie L. McMullen and Betty L. Goldy;

M. B. Montgomery, Esq., Attorney for Arlena L. Smith, Bobbie L. McMullen and Betty L. Goldy;

Howard Moore, Jr., Esq., Attorney for Grover Cleveland Harrison, Sojourner Motor Fleet, Inc., and Student Non-Violent Coordinating Committee;

Eddie H. Tucker, Esq., Attorney for Grover Cleveland Harrison, Sojourner Motor Fleet, Inc., and Student Non-Violent Coordinating Committee;

Jack H. Young, Esq., Attorney for National Association for the Advancement of Colored People and Southern Christian Leadership Conference;

Barbara A. Morris and Robert L. Carter, Esq., Attorneys for National Association for the Advancement of Colored People;

Melvyn Zarr, Esq., Attorney for Southern Christian Leadership Conference;

R. Jess Brown, Esq., Attorney for Congress of Racial Equality;

Alvin J. Bronstein, Esq., Attorney for Congress of Racial Equality;

Carl Rachlin, Esq., Attorney for Congress of Racial Equality;

L. H. Rosenthal, Esq., Attorney for Council of Federated Organizations; and

Benjamin E. Smith, Esq., Attorney for Council of Federated Organizations;

by depositing a copy of same in the United States mail, postage prepaid, addressed to the above parties on this, the 12th day of September, 1968.

Paul W. Brock

United States Court of Appeals
FIFTH CIRCUIT

Smith v Harrison

EDWARD W. WADSWORTH
CLERK

OFFICE OF THE CLERK

ROOM 408-400 ROYAL ST.
NEW ORLEANS, LA. 70130

March 25, 1968

Mr. Paul Brock
Attorney at Law
30th Floor-First Natl. Bank Bldg.
Mobile, Alabama

Dear Mr. Brock:

Re: No. 24926 - American Liberty Insurance Co.
v. Arlena L. Smith, et al

Confirming my telephone advice of today, enclosed is copy of an order this day entered by the Court granting your request for continuance of the oral argument of the captioned cause.

Very truly yours,

EDWARD W. WADSWORTH, Clerk

By Audrey D. Glynn
Deputy Clerk

/adg
Encl.

cc & enc. to:
Mr. Howard Moore, Jr.
Mr. George E. Morse
Mr. Alvin J. Bronstein
Miss Barbara Morris
Mr. Jack Young
Mr. Benjamin E. Smith
Mr. M. B. Montgomery
Mr. Melvyn Zarr
Mr. James Armstrong Walters
Mr. Carl Rachlin
Mr. L. H. Rosenthal

Messrs. Dave Dennis
Robert Moses
Bob Weil and
Miss Emily Grodon

Smith v Harrison

HAND, ARENDALL, BEDSOLE, GREAVES & JOHNSTON
LAWYERS
FIRST NATIONAL BANK BUILDING
MOBILE, ALABAMA
36601

CHAS. C. HAND
C. B. ARENDALL, JR.
T. MASSEY BEDSOLE
THOMAS G. GREAVES, JR.
WM. BREVARD HAND
VIVIAN G. JOHNSTON, JR.
PAUL W. BROCK
ALEX F. LANKFORD, III
EDMUND R. CANNON
LYMAN F. HOLLAND, JR.
J. THOMAS HINES, JR.
DONALD F. PIERCE
LOUIS E. BRASWELL
HAROLD D. PARKMAN
G. PORTER BROCK, JR.
HARWELL E. COALE, JR.
STEPHEN G. CRAWFORD
JERRY A. McDOWELL
W. RAMSEY McKINNEY, JR.
LARRY U. SIMS
C. WAYNE LOUDERMILCH

MAILING ADDRESS:
P. O. BOX 123

CABLE ADDRESS:
HAB

TELEPHONE:
432-5511
AREA CODE 205

March 25, 1968

Howard Moore, Jr., Esq.
Attorney at Law
859 1/2 Hunter Street, N.W.
Atlanta, Georgia

Re: American Liberty v. Smith, et al.
No. 24926

Dear Mr. Moore:

The Fifth Circuit Court of Appeals has granted my request for a continuance of the oral argument in the above-referenced case from March 28. The argument will be reset at a later date.

Very truly yours,

For the Firm

PWB.bb

CC: James A. Walters, Esq.
Attorney at Law
519 North 2nd Avenue
Columbus, Mississippi

CC: M. B. Montgomery, Esq.
Attorney at Law
Barnett, Montgomery, McClintock & Cunningham
P. O. Box 1288
Jackson, Mississippi

CC: Eddie H. Tucker, Esq.
Attorney at Law
115 1/2 North Farish Street
Jackson, Mississippi

CC: Jack H. Young, Esq.
Attorney at Law
115 1/2 North Farish Street
Jackson, Mississippi

CC: Barbara A. Morris and Robert
L. Carter, Esq.
Attorneys at Law
20 West 40th Street
New York, New York

CC: Melvin Zarr, Esq.
Attorney at Law
10 Columbus Circle
New York, New York 10019

CC: R. Jess Brown, Esq.
Attorney at Law
125 1/2 North Farish Street
Jackson, Mississippi

CC: Alvin J. Bronstein, Esq.
Attorney at Law
602 North Farish Street
Jackson, Mississippi

CC: Carl Rachlin, Esq.
Attorney at Law
38 Park Row
New York, New York

CC: L. H. Rosenthal, Esq.
Suite 406
518 E. Capitol Street
Jackson, Mississippi

CC: Benjamin E. Smith, Esq.
Attorney at Law
1006 Baronne Building
505 Baronne Street
New Orleans, Louisiana

CC: The Honorable Edward W. Wadsworth, Clerk
The Fifth Circuit Court of Appeals
c/o Clerk, United States District Court
Jackson, Mississippi

SMITH v. HARRISON MISSISSIPPI 1964-1966
(DEFENDANT'S EVIDENCE SUIT)

AMERICAN LIBERTY INSURANCE COMPANY
P. O. Box 2508
Birmingham, Alabama 35201

CERTIFICATION

I, William H. Pruett, Secretary of American Liberty Insurance Company, do hereby certify that the foregoing to which this certificate is attached is a true and correct copy of Policy DM 672444, together with endorsements, which policy was issued on September 21, 1964 to Sojourner Motor Fleet, Inc.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of American Liberty Insurance Company this 23rd day of March, 1965.

AMERICAN LIBERTY INSURANCE COMPANY

(SEAL)

By: William H. Pruett
William H. Pruett, Secretary

Exhibit "A"

COMBINATION AUTOMOBILE POLICY

No. DM

STOCK COMPANY

AMERICAN LIBERTY INSURANCE COMPANY

Birmingham, Alabama

DECLARATIONS

Item 1. Named Insured and Address: (No., Street, Town, County, State)

Item 2. Policy Period: (Mo. Day Yr.) (Months)

From to

12:01 A.M., standard time at the address of the named insured as stated herein.

The automobile will be principally garaged in the above town or city, county and state, unless otherwise stated herein:*

Occupation of the named insured is (IF MARRIED WOMAN, GIVE HUSBAND'S OCCUPATION OR BUSINESS)

Designation of insured for purposes of division 2 of coverage C, if required by Insuring Agreement III:

Item 3. The insurance afforded is only with respect to such and so many of the following coverages as are indicated by specific premium charge or charges. The limit of the company's liability against each such coverage shall be as stated herein, subject to all the terms of this policy having reference thereto.

PREMIUMS	LIMITS OF LIABILITY	CODE	COVERAGES	
$	thousand dollars each person thousand dollars each accident		A	Bodily Injury Liability
$	thousand dollars each accident		B	Property Damage Liability
$	$ each person		C	Automobile Medical Payments
$	$		D	Comprehensive—Loss of or Damage to the Automobile, except by Collision or Upset but including Fire, Theft and Windstorm
$	$ Actual Cash Value less deductible		E	Collision or Upset
$	$		F	Fire, Lightning and Transportation
$	$		G	Theft (Broad Form)
$	$		H	Windstorm, Hail, Earthquake or Explosion
$	$		I	Combined Additional Coverage
$	for each disablement		J	Towing and Labor Costs
$	$			
$	**Total Premium** Forms and endorsements made part of policy at time of issue:			

Item 4. Description of the automobile and facts respecting its purchase by the named insured:

Year of Model	Trade Name	Model	Body Type; Truck Size; Truck Load Capacity; Tank Gallonage Capacity; or Bus Seating Capacity	Identification Number (I) Serial Number (S) Motor Number (M)	Number of Cylinders	F.O.B. List Price or Delivered Price at Factory	Class & Rating Symbol	Actual Cost When Purchased Including Equipment	Purchased Month, Year	Purchased New or Used

Any loss under Coverages D, E, F, G, H and I is payable as interest may appear to the named insured and

The automobile is unencumbered unless otherwise stated herein.* The encumbrance, number and amount of each installment payment, due date and amount of final installment are:

Item 5. The purposes for which the automobile is to be used are "pleasure and business," unless otherwise stated herein:*

Item 6. Unless otherwise stated herein: (a) If no automobile is described above, the total number of private passenger automobiles owned on the effective date of this policy by the named insured and by his spouse, if a resident of the same household, does not exceed one. (b) Except with respect to bailment lease, conditional sale, purchase agreement, mortgage or other encumbrance, the named insured is the sole owner of the automobile. (c) During the past three years no insurer has canceled insurance, issued to the named insured, similar to that afforded hereunder:*

* Absence of an entry means "No Exceptions."

Countersigned: at

By _____
Authorized Agent

OKP6019-DM
(REV.5-1-58)

SPECIMEN POLICY

AMERICAN LIBERTY INSURANCE COMPANY

(A stock insurance company, herein called the company)

Agrees with the insured, named in the declarations made a part hereof, in consideration of the payment of the premium and in reliance upon the statements in the declarations and subject to the limits of liability, exclusions, conditions and other terms of this policy:

INSURING AGREEMENTS

I. Coverage A—Bodily Injury Liability: To pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages because of bodily injury, sickness or disease, including death at any time resulting therefrom, sustained by any person, caused by accident and arising out of the ownership, maintenance or use of the automobile.

Coverage B—Property Damage Liability: To pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages because of injury to or destruction of property, including the loss of use thereof, caused by accident and arising out of the ownership, maintenance or use of the automobile.

Coverage C—Automobile Medical Payments: To pay all reasonable expenses incurred within one year from the date of accident for necessary medical, surgical and dental services, including prosthetic devices, and necessary ambulance, hospital, professional nursing and funeral services:

Division 1. To or for each person who sustains bodily injury, sickness or disease, caused by accident, while in or upon or while entering into or alighting from the automobile, provided the automobile is being used by the named insured or his spouse if a resident of the same household, or with the permission of either; or

Division 2. To or for each insured who sustains bodily injury, sickness or disease, caused by accident, while in or upon, or while entering into or alighting from, or through being struck by, an automobile.

Coverage D—Comprehensive Loss of or Damage to the Automobile, Except by Collision or Upset: To pay for direct and accidental loss of or damage to the automobile, hereinafter called loss, except loss caused by collision of the automobile with another object or by upset of the automobile or by collision of the automobile with a vehicle to which it is attached. Breakage of glass and loss caused by missiles, falling objects, fire, theft, explosion, earthquake, windstorm, hail, water, flood, malicious mischief or vandalism, riot or civil commotion shall not be deemed loss caused by collision or upset.

Coverage E—Collision or Upset: To pay for direct and accidental loss of or damage to the automobile, hereinafter called loss, caused by collision of the automobile with another object or by upset of the automobile, but only for the amount of each such loss in excess of the deductible amount, if any, stated in the declarations as applicable hereto.

Coverage F—Fire, Lightning and Transportation: To pay for direct and accidental loss of or damage to the automobile, hereinafter called loss, caused (a) by fire or lightning, (b) by smoke or smudge due to a sudden, unusual and faulty operation of any fixed heating equipment serving the premises in which the automobile is located, or (c) by the stranding, sinking, burning, collision or derailment of any conveyance in or upon which the automobile is being transported.

Coverage G—Theft (Broad Form): To pay for loss of or damage to the automobile, hereinafter called loss, caused by theft, larceny, robbery or pilferage.

Coverage H—Windstorm, Hail, Earthquake or Explosion: To pay for direct and accidental loss of or damage to the automobile, hereinafter called loss, caused by windstorm, hail, earthquake or explosion, excluding loss or damage caused by rain, snow or sleet, whether or not wind-driven.

Coverage I—Combined Additional Coverage: To pay for direct and accidental loss of or damage to the automobile, hereinafter called loss, caused by windstorm, hail, earthquake, explosion, riot or civil commotion, or the forced landing or falling of any aircraft or of its parts or equipment, flood or rising waters, malicious mischief or vandalism, external discharge or leakage of water except loss resulting from rain, snow or sleet whether or not wind-driven; provided, with respect to each automobile $25 shall be deducted from each loss caused by malicious mischief or vandalism.

Coverage J—Towing and Labor Costs: To pay for towing and labor costs necessitated by the disablement of the automobile, provided the labor is performed at the place of disablement.

II. Defense, Settlement, Supplementary Payments: With respect to such insurance as is afforded by this policy for bodily injury liability and for property damage liability, the company shall:

(a) defend any suit against the insured alleging such injury, sickness, disease or destruction and seeking damages on account thereof, even if such suit is groundless, false or fraudulent; but the company may make such investigation, negotiation and settlement of any claim or suit as it deems expedient;

(b) (1) pay all premiums on bonds to release attachments for an amount not in excess of the applicable limit of liability of this policy, all premiums on appeal bonds required in any such defended suit, the cost of bail bonds required of the insured in the event of accident or traffic law violation during the policy period, not to exceed $100 per bail bond, but without any obligation to apply for or furnish any such bonds;

(2) pay all expenses incurred by the company, all costs taxed against the insured in any such suit and all interest accruing after entry of judgment until the company has paid or tendered or deposited in court such part of such judgment as does not exceed the limit of the company's liability thereon;

(3) pay expenses incurred by the insured for such immediate medical and surgical relief to others as shall be imperative at the time of the accident;

(4) reimburse the insured for all reasonable expenses, other than loss of earnings, incurred at the company's request;

and the amounts so incurred, except settlements of claims and suits, are payable by the company in addition to the applicable limit of liability of this policy.

III. Definition of Insured: (a) With respect to the insurance for bodily injury liability and for property damage liability the unqualified word "insured" includes the named insured and, if the named insured is an individual, his spouse if a resident of the same household, and also includes any person while using the automobile and any person or organization legally responsible for the use thereof, provided the actual use of the automobile is by the named insured or such spouse or with the permission of either. The insurance with respect to any person or organization other than the named insured or such spouse does not apply:

(1) to any person or organization, or to any agent or employee thereof, operating an automobile sales agency, repair shop, service station, storage garage or public parking place, with respect to any accident arising out of the operation thereof, but this provision does not apply to a resident of the same household as the named insured, to a partnership in which such resident or the named insured is a partner, or to any partner, agent or employee of such resident or partnership;

(2) to any employee with respect to injury to or sickness, disease or death of another employee of the same employer injured in the course of such employment in an accident arising out of the maintenance or use of the automobile in the business of such employer.

(b) With respect to the insurance under division 2 of coverage C, the unqualified word "insured" means:

(1) the named insured, if an individual or husband and wife who are residents of the same household, otherwise the person designated in Item 2 of the declarations, and

(2) while residents of the same household as the named insured or such designated person, his spouse and the relatives of either;

provided, if such named insured or designated person shall die, this insurance shall cover any person who was an insured at the time of such death.

IV. Automobile Defined, Trailers, Private Passenger Automobile, Two or More Automobiles, Including Automatic Insurance:

(a) **Automobile.** Except with respect to division 2 of coverage C and except where stated to the contrary, the word "automobile" means:

(1) **Described Automobile**—the motor vehicle or trailer described in this policy or, if none is so described, with respect to coverages A, B and division 1 of coverage C, any private passenger automobile owned on the effective date of this policy by the named insured or by his spouse if a resident of the same household;

(2) **Trailer**—under coverages A, B and division 1 of coverage C, a trailer not described in this policy, if designed for use with a private passenger automobile, if not being used for business purposes with another type automobile, and under division 1 of coverage C if not a home, office, store, display or passenger trailer;

(3) **Temporary Substitute Automobile**—under coverages A, B and division 1 of coverage C, an automobile not owned by the named insured or his spouse if a resident of the same household, while temporarily used as a substitute for the described automobile when withdrawn from normal use because of its breakdown, repair, servicing, loss or destruction;

(4) **Newly Acquired Automobile**—an automobile, ownership of which is acquired by the named insured or his spouse if a resident of the same household, if (i) it replaces an automobile owned by either and covered by this policy, or the company insures all automobiles owned by the named insured and such spouse on the date of its delivery, and (ii) the named insured or such spouse notifies the company within thirty days following such delivery date; but such notice is not required under cov-

(Attach Endorsements Here)

erages A, B and division 1 of coverage C if the newly acquired automobile replaces an owned automobile covered by this policy. The insurance with respect to the newly acquired automobile does not apply to any loss against which the named insured or such spouse has other valid and collectible insurance. Under coverages D, E, F, G, H and I, when a limit of liability is expressed in the declarations as a stated amount, such limit as to the newly acquired automobile shall be replaced by the actual cash value. The named insured shall pay any additional premium required because of the application of the insurance to such newly acquired automobile.

The word "automobile" also includes under coverages D, E, F, G, H and I its equipment and other equipment permanently attached thereto.

Under division 2 of coverage C, the word "automobile" means a land motor vehicle or trailer not operated on rails or crawler-treads, but does not mean: (1) a farm type tractor or other equipment designed for use principally off public roads, except while actually upon public roads, or (2) a land motor vehicle or trailer while located for use as a residence or premises and not as a vehicle.

(b) **Private Passenger Automobile.** The term "private passenger automobile" means a private passenger, station wagon or jeep type automobile, and also includes under coverages A, B and division 1 of coverage C any automobile the purposes of use of which are stated in the declarations as "pleasure and business."

(c) **Semitrailer.** The word "trailer" includes semitrailer.

(d) **Two or More Automobiles.** When two or more automobiles are insured hereunder, the terms of this policy shall apply separately to each, but a motor vehicle and a trailer or trailers attached thereto shall be held to be one automobile as respects limits of liability under coverages A and B and separate automobiles as respects limits of liability, including any deductible provisions, under coverages D, E, F, G, H, I and J.

V. Use of Other Automobiles: If the named insured is an individual or husband and wife and if during the policy period such named insured, or the spouse of such individual if a resident of the same household, owns a private passenger automobile covered by this policy, such insurance as is afforded by this policy under coverages A, B, division 1 of coverage C and coverage E with respect to said automobile applies with respect to any other automobile, subject to the following provisions:

(a) With respect to the insurance for bodily injury liability and for property damage liability the unqualified word "insured" includes (1) such named insured and spouse, and (2) any other person or organization legally responsible for the use by such named insured or spouse of an automobile not owned or hired by such other person or organization. Insuring Agreement III does not apply to this insurance.

(b) Under division 1 of coverage C, this insurance applies only if the injury results from the operation of such other automobile by such named insured or spouse or on behalf of either by a private chauffeur or domestic servant of such named insured or spouse, or from the occupancy of said automobile by such named insured or spouse.

(c) Under coverage E, this insurance applies only with respect to a private passenger automobile while being operated or used by such named insured or spouse. Exclusion (k) does not apply to this insuring agreement.

(d) This insuring agreement does not apply:

(1) to any automobile owned by or furnished for regular use to either the named insured or a member of the same household other than a private chauffeur or domestic servant of such named insured or spouse;

(2) to any accident arising out of the operation of an automobile sales agency, repair shop, service station, storage garage or public parking place;

(3) under coverages A, B or division 1 of coverage C, to any automobile while used in a business or occupation of such named insured or spouse except a private passenger automobile operated or occupied by such named insured, spouse, private chauffeur or domestic servant;

(4) under coverage E, to any loss when there is any other insurance which would apply thereto in the absence of this insuring agreement, whether such other insurance covers the interest of the named insured or spouse, the owner of the automobile or any other person or organization.

VI. Loss of Use by Theft—Rental Reimbursement: The company, following a theft covered under this policy of the entire automobile, shall reimburse the named insured for expense not exceeding $5 for any one day nor totaling more than $150 or the actual cash value of the automobile at time of theft, whichever is less, incurred for the rental of a substitute automobile, including taxicabs. Such reimbursement is payable by the company in addition to the applicable limit of liability of this policy.

Reimbursement is limited to such expense incurred during the period commencing seventy-two hours after such theft has been reported to the company and the police and terminating, regardless of expiration of the policy period, on the date the whereabouts of the automobile becomes known to the named insured or the company or on such earlier date as the company makes or tenders settlement for such theft.

Such reimbursement shall be made only if the stolen automobile was a private passenger automobile not used as a public or livery conveyance and not owned and held for sale by an automobile dealer.

VII. General Average and Salvage Charges: The company, with respect to such transportation insurance as is afforded by this policy, shall pay any general average and salvage charges for which the named insured becomes legally liable.

VIII. Policy Period, Territory, Purposes of Use: This policy applies only to accidents which occur and to direct and accidental losses to the automobile which are sustained during the policy period, while the automobile is within the United States of America, its territories or possessions, or Canada, or is being transported between ports thereof and, if a "described automobile" under Insuring Agreement IV, is owned, maintained and used for the purposes stated as applicable thereto in the declarations.

EXCLUSIONS

This policy does not apply:

(a) except under division 2 of coverage C, while the automobile is used as a public or livery conveyance, unless such use is specifically declared and described in this policy;

(b) under coverages A and B, to liability assumed by the insured under any contract or agreement;

(c) under coverages A and B, while the automobile is used for the towing of any trailer owned or hired by the insured and not covered by like insurance in the company; or while any trailer covered by this policy is used with any automobile owned or hired by the insured and not covered by like insurance in the company;

(d) under coverage A, to bodily injury to or sickness, disease or death of any employee of the insured arising out of and in the course of (1) domestic employment by the insured, if benefits therefor are in whole or in part either payable or required to be provided under any workmen's compensation law, or (2) other employment by the insured;

(e) under coverage A, to any obligation for which the insured or any carrier as his insurer may be held liable under any workmen's compensation, unemployment compensation or disability benefits law, or under any similar law;

(f) under coverage B, to injury to or destruction of property owned or transported by the insured, or property rented to or in charge of the insured other than a residence or private garage injured or destroyed by a private passenger automobile covered by this policy;

(g) under division 1 of coverage C, to bodily injury to or sickness, or Nuclear Insurance Association of Canada, or would be an insured under any such policy but for its termination upon exhaustion of its limit of liability; or

(b) resulting from the hazardous properties of nuclear material and with respect to which (1) any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or (2) the insured is, or had this policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.

(2) Under any Medical Payments Coverage, or under any Supplementary Payments provision relating to immediate medical or surgical relief, to expenses incurred with respect to bodily injury, sickness, disease or death resulting from the hazardous properties of nuclear material and arising out of the operation of a nuclear facility by any person or organization.

(3) Under any Liability Coverage, to injury, sickness, disease, death or destruction resulting from the hazardous properties of nuclear material, if

(a) the nuclear material (1) is at any nuclear facility owned by, or operated by or on behalf of, an insured or (2) has been discharged or dispersed therefrom;

(b) the nuclear material is contained in spent fuel or waste at any time possessed, handled, used, pro-

(g) under division 1 of coverage C, to bodily injury to or sickness, disease or death of any employee of the named insured or spouse arising out of and in the course of (1) domestic employment by the named insured or spouse, if benefits therefor are in whole or in part either payable or required to be provided under any workmen's compensation law, or (2) other employment by the named insured or spouse;

(h) under coverage C, to bodily injury to or sickness, disease or death of any person who is an employee of an automobile sales agency, repair shop, service station, storage garage or public parking place, if the accident arises out of the operation thereof and if benefits therefor are in whole or in part either payable or required to be provided under any workmen's compensation law;

(i) under division 2 of coverage C, to bodily injury to or sickness, disease or death of an insured sustained while in or upon or while entering into or alighting from an automobile owned by any insured;

(j) to injury, sickness, disease, death or loss due to war, whether or not declared, civil war, insurrection, rebellion or revolution, or to any act or condition incident to any of the foregoing, (1) with respect to expenses under Insuring Agreement II (b) (3) or under coverage C, or (2) under coverages D, E, F, G, H, I and J;

(k) under coverages D, E, F, G, H, I and J, if the automobile is or at any time becomes subject to any bailment lease, conditional sale, purchase agreement, mortgage or other encumbrance not specifically declared and described in this policy;

(l) under coverages D, E, F, G, H, I and J, to any damage to the automobile which is due and confined to wear and tear, freezing, mechanical or electrical breakdown or failure, unless such damage is the result of other loss covered by this policy;

(m) under coverages D, E, F, G, H, I and J, to robes, wearing apparel or personal effects;

(n) under coverages D, E, F, G, H, I and J, to tires unless damaged by fire or stolen or unless such loss be coincident with and from the same cause as other loss covered by this policy;

(o) under coverages D and G, to loss due to conversion, embezzlement or secretion by any person in possession of the automobile under a bailment lease, conditional sale, purchase agreement, mortgage or other encumbrance;

(p) under coverage E, to breakage of glass if insurance with respect to such breakage is otherwise afforded;

(q) under coverages D, E, F, G, H, I and J, to loss due to confiscation by duly constituted governmental or civil authority;

(r) under coverages D, E, F, G, H, I and J to loss due to radioactive contamination.

(s) (1) Under any Liability Coverage, to injury, sickness, disease, death or destruction.

(a) with respect to which an insured under the policy is also an insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters

cessed, stored, transported or disposed of by or on behalf of an insured; or

(c) the injury, sickness, disease, death or destruction arises out of the furnishing by an insured of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any nuclear facility, but if such facility is located within the United States of America, its territories or possessions or Canada, this exclusion (c) applies only to injury to or destruction of property at such nuclear facility.

(4) As used in this policy:

"hazardous properties" include radioactive, toxic or explosive properties;

"nuclear material" means source material, special nuclear material or byproduct material;

"source material", "special nuclear material", and "byproduct material" have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof;

"spent fuel" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a nuclear reactor;

"waste" means any waste material (1) containing byproduct material and (2) resulting from the operation by any person or organization of any nuclear facility included within the definition of nuclear facility under paragraph (a) or (b) thereof;

"nuclear facility" means

(a) any nuclear reactor,

(b) any equipment or device designed or used for (1) separating the isotopes of uranium or plutonium, (2) processing or utilizing spent fuel, or (3) handling, processing or packaging waste, . . .

(c) any equipment or device used for the processing, fabricating or alloying of special nuclear material if at any time the total amount of such material in the custody of the insured at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235

(d) any structure, basin, excavation, premises or place prepared or used for the storage or disposal of waste,

and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations;

"nuclear reactor" means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material;

With respect to injury to or destruction of property, the word **"injury"** or **"destruction"** includes all forms of radioactive contamination of property.

CONDITIONS

1. Notice of Accident—Coverages A, B and C: When an accident occurs written notice shall be given by or on behalf of the insured to the company or any of its authorized agents as soon as practicable. Such notice shall contain particulars sufficient to identify the insured and also reasonably obtainable information respecting the time, place and circumstances of the accident, the names and addresses of the injured and of available witnesses.

2. Notice of Claim or Suit—Coverages A and B: If claim is made or suit is brought against the insured, the insured shall immediately forward to the company every demand, notice, summons or other process received by him or his representative.

3. Limits of Liability—Coverage A: The limit of bodily injury liability stated in the declarations as applicable to "each person" is the limit

of the company's liability for all damages, including damages for care and loss of services, arising out of bodily injury, sickness or disease, including death at any time resulting therefrom, sustained by one person as the result of any one accident; the limit of such liability stated in the declarations as applicable to "each accident" is, subject to the above provision respecting each person, the total limit of the company's liability for all damages, including damages for care and loss of services, arising out of bodily injury, sickness or disease, including death at any time resulting therefrom, sustained by two or more persons as the result of any one accident.

4. Limit of Liability—Coverage B: The limit of property damage liability stated in the declarations as applicable to "each accident" is the total limit of the company's liability for all damages arising out of injury to or destruction of all property of one or more persons or organizations, including the loss of use thereof, as the result of any one accident.

5. Limit of Liability—Coverage C: The limit of liability for medical payments stated in the declarations as applicable to "each person" is the limit of the company's liability for all expenses incurred by or on behalf of each person, including each insured, who sustains bodily injury, sickness, disease or death as the result of any one accident.

6. Severability of Interests—Coverages A and B: The term "the insured" is used severally and not collectively, but the inclusion herein of more than one insured shall not operate to increase the limits of the company's liability.

7. Action Against Company—Coverages A and B: No action shall lie against the company unless, as a condition precedent thereto, the insured shall have fully complied with all the terms of this policy, nor until the amount of the insured's obligation to pay shall have been finally determined either by judgment against the insured after actual trial or by written agreement of the insured, the claimant and the company.

Any person or organization or the legal representative thereof who has secured such judgment or written agreement shall thereafter be entitled to recover under this policy to the extent of the insurance afforded by this policy. Nothing contained in this policy shall give any person or organization any right to join the company as a co-defendant in any action against the insured to determine the insured's liability.

Bankruptcy or insolvency of the insured or of the insured's estate shall not relieve the company of any of its obligations hereunder.

8. Action Against Company—Coverage C: No action shall lie against the company unless, as a condition precedent thereto, there shall have been full compliance with all the terms of this policy, nor until thirty days after the required proofs of claim have been filed with the company.

9. Financial Responsibility Laws—Coverages A and B: When this policy is certified as proof of financial responsibility for the future under the provisions of the motor vehicle financial responsibility law of any state or province, such insurance as is afforded by this policy for bodily injury liability or for property damage liability shall comply with the provisions of such law which shall be applicable with respect to any such liability arising out of the ownership, maintenance or use of the automobile during the policy period, to the extent of the coverage and limits of liability required by such law, but in no event in excess of the limits of liability stated in this policy. The insured agrees to reimburse the company for any payment made by the company which it would not have been obligated to make under the terms of this policy except for the agreement contained in this paragraph.

10. Assault and Battery—Coverages A and B: Assault and battery shall be deemed an accident unless committed by or at the direction of the insured.

11. Medical Reports; Proof and Payment of Claim—Coverage C: As soon as practicable the injured person or someone on his behalf shall give to the company written proof of claim, under oath if required, and shall, after each request from the company, execute authorization to enable the company to obtain medical reports and copies of records. The injured person shall submit to physical examination by physicians selected by the company when and as often as the company may reasonably require.

The company may pay the injured person or any person or organization rendering the services and such payment shall reduce the amount payable hereunder for such injury. Payment hereunder shall not constitute an admission of liability of any person or, except hereunder, of the company.

12. Named Insured's Duties When Loss Occurs—Coverages D, E, F, G, H, I and J: When loss occurs, the named insured shall:

(a) protect the automobile, whether or not the loss is covered by this policy, and any further loss due to the named insured's failure to protect shall not be recoverable under this policy; reasonable expense incurred in affording such protection shall be deemed incurred at the company's request;

(b) give notice thereof as soon as practicable to the company or any of its authorized agents and also, in the event of theft, larceny, robbery or pilferage, to the police but shall not, except at his own cost, offer or pay any reward for recovery of the automobile;

(c) file proof of loss with the company within sixty days after the occurrence of loss, unless such time is extended in writing by the company, in the form of a sworn statement of the named insured setting forth the interest of the named insured and of all other

of the appraisal and umpire.

The company shall not be held to have waived any of its rights by any act relating to appraisal.

14. Limit of Liability; Settlement Options; No Abandonment—Coverages D, E, F, G, H and I: The limit of the company's liability for loss shall not exceed either (1) the actual cash value of the automobile, or if the loss is of a part thereof the actual cash value of such part, at time of loss or (2) what it would then cost to repair or replace the automobile or such part thereof with other of like kind and quality, with deduction for depreciation, or (3) the applicable limit of liability stated in the declarations.

The company may pay for the loss in money or may repair or replace the automobile or such part thereof, as aforesaid, or may return any stolen property with payment for any resultant damage thereto at any time before the loss is paid or the property is so replaced, or may take all or such part of the automobile at the agreed or appraised value but there shall be no abandonment to the company.

15. Automatic Reinstatement—Coverages D, E, F, G, H and I: When the automobile is damaged, whether or not such damage is covered under this policy, the liability of the company shall be reduced by the amount of such damage until repairs have been completed, but shall then attach as originally written without additional premium.

16. Payment for Loss; Action Against Company—Coverages D, E, F, G, H, I and J: Payment for loss may not be required nor shall action lie against the company unless, as a condition precedent thereto, the named insured shall have fully complied with all the terms of this policy nor until thirty days after proof of loss is filed and the amount of loss is determined as provided in this policy.

17. No Benefit to Bailee—Coverages D, E, F, G, H, I and J: The insurance afforded by this policy shall not enure directly or indirectly to the benefit of any carrier or bailee liable for loss to the automobile.

18. Assistance and Cooperation of the Insured—Coverages A, B, D, E, F, G, H, I and J: The insured shall cooperate with the company and, upon the company's request, shall attend hearings and trials and shall assist in effecting settlements, securing and giving evidence, obtaining the attendance of witnesses and in the conduct of suits. The insured shall not, except at his own cost, voluntarily make any payment, assume any obligation or incur any expense other than for such immediate medical and surgical relief to others as shall be imperative at the time of accident.

19. Subrogation—Coverages A, B, D, E, F, G, H, I and J: In the event of any payment under this policy, the company shall be subrogated to all the insured's rights of recovery therefor against any person or organization and the insured shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The insured shall do nothing after loss to prejudice such rights.

20. Other Insurance—Coverages A, B, D, E, F, G, H, I and J: If the insured has other insurance against a loss covered by this policy the company shall not be liable under this policy for a greater proportion of such loss than the applicable limit of liability stated in the declarations bears to the total applicable limit of liability of all valid and collectible insurance against such loss; provided, however, under coverages A and B the insurance with respect to temporary substitute automobiles under Insuring Agreement IV or other automobiles under Insuring Agreement V shall be excess insurance over any other valid and collectible insurance.

21. Other Insurance—Coverage C: Under division 1 of coverage C, the insurance with respect to temporary substitute automobiles under Insuring Agreement IV or other automobiles under Insuring Agreement V shall be excess insurance over any other valid and collectible automobile medical payments insurance.

Under division 2 of coverage C, the insurance shall be excess over any other valid and collectible automobile medical payments insurance available to an insured under any other policy.

22. Changes: Notice to any agent or knowledge possessed by any agent or by any other person shall not effect a waiver or a change in any part of this policy or estop the company from asserting any right under the terms of this policy; nor shall the terms of this policy be waived or changed, except by endorsement issued to form a part of this policy.

23. Assignment: Assignment of interest under this policy shall not bind the company until its consent is endorsed hereon; if, however, the named insured shall die, this policy shall cover (1) the named insured's spouse, if a resident of the same household at the time of such death, and legal representative as named insureds, and (2) under coverages A and B, subject otherwise to the provisions of Insuring Agreement III, any person having proper temporary custody of the automobile, as an insured, and under division 1 of coverage C while the automobile is used by such person, until the appointment and qualification of such legal representative; provided that notice of cancelation addressed to the insured named in Item 1 of the declarations and mailed to the address shown in this policy shall be sufficient notice to effect cancelation of this policy.

24. Cancelation: This policy may be canceled by the named insured by surrender thereof to the company or any of its authorized agents or by mailing to the company written notice stating when thereafter the cancelation shall be effective. This policy may be canceled by the company by mailing to the named insured at the address shown in this

give to the company written proof of claim, under oath if required, and shall, after each request from the company, execute authorization to enable the company to obtain medical reports and copies of records. The injured person shall submit to physical examination by physicians selected by the company when and as often as the company may reasonably require.

The company may pay the injured person or any person or organization rendering the services and such payment shall reduce the amount payable hereunder for such injury. Payment hereunder shall not constitute an admission of liability of any person or, except hereunder, of the company.

12. Named Insured's Duties When Loss Occurs—Coverages D, E, F, G, H, I and J: When loss occurs, the named insured shall:

(a) protect the automobile, whether or not the loss is covered by this policy, and any further loss due to the named insured's failure to protect shall not be recoverable under this policy; reasonable expense incurred in affording such protection shall be deemed incurred at the company's request;

(b) give notice thereof as soon as practicable to the company or any of its authorized agents and also, in the event of theft, larceny, robbery or pilferage, to the police but shall not, except at his own cost, offer or pay any reward for recovery of the automobile;

(c) file proof of loss with the company within sixty days after the occurrence of loss, unless such time is extended in writing by the company, in the form of a sworn statement of the named insured setting forth the interest of the named insured and of all others in the property affected, any encumbrances thereon, the actual cash value thereof at time of loss, the amount, place, time and cause of such loss, the amount of rental or other expense for which reimbursement is provided under this policy, together with original receipts therefor, and the description and amounts of all other insurance covering such property.

Upon the company's request, the named insured shall exhibit the damaged property to the company and submit to examinations under oath by anyone designated by the company, subscribe the same and produce for the company's examination all pertinent records and sales invoices, or certified copies if originals be lost, permitting copies thereof to be made, all at such reasonable times and places as the company shall designate.

13. Appraisal—Coverages D, E, F, G, H, I and J: If the named insured and the company fail to agree as to the amount of loss, each shall, on the written demand of either, made within sixty days after receipt of proof of loss by the company, select a competent and disinterested appraiser, and the appraisal shall be made at a reasonable time and place. The appraisers shall first select a competent and disinterested umpire, and failing for fifteen days to agree upon such umpire, then, on the request of the named insured or the company, such umpire shall be selected by a judge of a court of record in the county and state in which such appraisal is pending. The appraisers shall then appraise the loss, stating separately the actual cash value at the time of loss and the amount of loss, and failing to agree shall submit their differences to the umpire. An award in writing of any two shall determine the amount of loss. The named insured and the company shall each pay his or its chosen appraiser and shall bear equally the other expenses

Under division 2 of coverage C, the insurance shall be excess over any other valid and collectible automobile medical payments insurance available to an insured under any other policy.

22. Changes: Notice to any agent or knowledge possessed by any agent or by any other person shall not effect a waiver or a change in any part of this policy or estop the company from asserting any right under the terms of this policy; nor shall the terms of this policy be waived or changed, except by endorsement issued to form a part of this policy.

23. Assignment: Assignment of interest under this policy shall not bind the company until its consent is endorsed hereon; if, however, the named insured shall die, this policy shall cover (1) the named insured's spouse, if a resident of the same household at the time of such death, and legal representative as named insureds, and (2) under coverages A and B, subject otherwise to the provisions of Insuring Agreement III, any person having proper temporary custody of the automobile, as an insured, and under division 1 of coverage C while the automobile is used by such person, until the appointment and qualification of such legal representative; provided that notice of cancelation addressed to the insured named in Item I of the declarations and mailed to the address shown in this policy shall be sufficient notice to effect cancelation of this policy.

24. Cancelation: This policy may be canceled by the named insured by surrender thereof to the company or any of its authorized agents or by mailing to the company written notice stating when thereafter the cancelation shall be effective. This policy may be canceled by the company by mailing to the named insured at the address shown in this policy written notice stating when not less than ten days thereafter such cancelation shall be effective. The mailing of notice as aforesaid shall be sufficient proof of notice. The time of the surrender or the effective date and hour of cancelation stated in the notice shall become the end of the policy period. Delivery of such written notice either by the named insured or by the company shall be equivalent to mailing.

If the named insured cancels, earned premium shall be computed in accordance with the customary short rate table and procedure. If the company cancels, earned premium shall be computed pro rata. Premium adjustment may be made either at the time cancelation is effected or as soon as practicable after cancelation becomes effective, but payment or tender of unearned premium is not a condition of cancelation.

25. Purposes of Use: (a) The term "pleasure and business" is defined as personal, pleasure, family and business use. (b) The term "commercial" is defined as use principally in the business occupation of the named insured as stated in the declarations, including occasional use for personal, pleasure, family and other business purposes. (c) Use of the automobile for the purposes stated includes the loading and unloading thereof.

26. Terms of Policy Conformed to Statute: Terms of this policy which are in conflict with the statutes of the State wherein this policy is issued are hereby amended to conform to such statutes.

27. Declarations: By acceptance of this policy the named insured agrees that the statements in the declarations are his agreements and representations, that this policy is issued in reliance upon the truth of such representations and that this policy embodies all agreements existing between himself and the company or any of its agents relating to this insurance.

In Witness Whereof, the company has caused this policy to be executed and attested, but this policy shall not be valid unless countersigned by a duly authorized representative of the company.

William H. Dunett *Secretary*

Fred A. Parnell *President*

SHORT RATE TABLE (For One Year Policies)

Days Policy in Force	Per Cent of 1 Yr. Prem. 5%
1	1
2	2
3	3
4	4
5	5
6	6
7	7
8	8
9	9
10	10
11	11
12	12
13	13
14	14
15	15
16	16
17	17
18	18
19	19
20	20
21	21
22	22
23	23
24	24
25	25
26	26
27	27
28	28
29	29
30	30
31	31
32	32 (1 mo.)
33	33
34	34
35	35
36	36
37	37
38	38
39	39
40	40
41	41
42	42
43	43
44	44
45	45
46	46
47	47
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52	52
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68	68
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81	81
82	82
83	83
84	84
85	85
86	86
87	87
88	88
89	89
90	90
91	91
92	92
93	93
94	94
95	95
96	96
97	97
98	98
99	99
100	100
101–105	6 mos.
106–109	
110–113	
114–116	
117–120	
121–124	4 mos.
125–127	
128–131	
132–135	
136–138	
139–142	
143–146	
147–149	
150–153	5 mos.
154–156	
157–160	
161–164	
165–167	
168–171	
172–175	
176–178	
179–182	6 mos.
183–187	
188–191	
192–196	
197–200	
201–205	
206–209	
210–214	7 mos.
215–218	
219–223	
224–228	
229–232	
233–237	
238–241	
242–246	8 mos.
247–250	
251–255	
256–260	
261–264	
265–269	
270–273	9 mos.
274–278	
279–282	
283–287	
288–291	
292–296	
297–301	
302–305	10 mos.
306–310	
311–314	
315–319	
320–323	
324–328	
329–332	
333–337	11 mos.
338–342	
343–346	
347–351	
352–355	
356–360	
361–365	12 mos.

DM 67 24 44

COMPANY COPY

AMERICAN LIBERTY INSURANCE COMPANY
COMBINATION AUTOMOBILE

Renewal
Agent
Registered

Agency Code	N or R	Eff. Date	Term	Exp'n Date	State

Items Inc.	TRANS.	LOCATION City or Reins. Co.	LOCATION Terr.	LINE	CLASS	AGE	EXPOS.	B.I. Lim.	B.I. Amount	P.D. Lim.	P.D. Amount	M.P. Lim.	M.P. Amount	Comp F & T Towing Code	Comp F & T Towing Amount	COLLISION & MISC. Cov. Code	COLLISION & MISC. Amount	TOTAL	COMM. RATE
	10			H															22.5
				H							AUDIT				DATE				22.5

Item 1. Named Insured and Address:
Sojouner Motor Fleet, Inc.
89 1/2 Raymond Street, N.W.
Atlanta, Fulton, Georgia

POL. REG. ☐ CR. ☐ ☐
INITIAL AUDIT ☑ ☑ ADD. PTS. ☐ ☑
APP. ☐ ☐ J-RATE ☐ ☐
M. V. R. ☐ ☐ SGND. ENDT. ☐ ☐
REJECTION UM. ☐ ☐
OTHER See memo

Item 2. Policy Period: (Mo. Day Yr.) (12 Months)
From 9/21/64 to 9/21/65
12:01 A.M., standard time at the address of the named insured as stated herein

The automobile will be principally garaged in the above town or city, county and state, unless otherwise stated herein:

Occupation of the named insured is Publishers

NOTED
NOV 16 1964

Designation of insured for purposes of division 2 of coverage C, if required by Insuring Agreement III.

Item 3. The insurance afforded is only with respect to such and so many of the following coverages as are indicated by specific premium charge or charges. The limit of the company's liability against each such coverage shall be as stated herein, subject to all the terms of this policy having attached hereto.

5125.00	10 thousand dollars each person 20 thousand dollars each accident		A	Bodily Injury Liability
3321.00	5 thousand dollars each accident		B	Property Damage Liability
	each person		C	Automobile Medical Payments
			D	Comprehensive—Loss of or Damage to the Automobile, except by Collision or Upset but including Fire, Theft and Windstorm
	Actual Cash Value less deductible $206.00 each +10.00 UMC		E	Collision or Upset
			F	Fire, Lightning and Transportation
			G	Theft (Broad Form)
			H	Windstorm, Hail, Earthquake or Explosion
			I	Combined Additional Coverage
	for each disablement		J	Towing and Labor Costs
11,443.00	UMC Rejected			
~~8446.00~~	Total Premium Forms and endorsements made part of policy at time of issue:			

Item 4. Description of the automobile and facts respecting its purchase by the named insured 3-01-4-0

Year of Model	Trade Name	Model	Body Type; Truck Size; Truck Load Capacity; Tank Gallonage Capacity; or Bus Seating Capacity	Identification Number (I) Serial Number (S) Motor Number (M)	Number of Cylinders	F.O.B. List Price or Delivered Price at Factory	Class & Rating Symbol	Actual Cost When Purchased Including Equipment	Purchased Month, Year	Purchased New or Used
SEE SCHEDULE OF AUTOS AND DRIVERS ATTACHED										

Any loss under Coverages D, E, F, G, H and I is payable as interest may appear to the named insured and
The automobile is unencumbered unless otherwise stated herein. The encumbrance, number and amount of each installment payment, due date and amount of final installment are:

Item 5. The purposes for which the automobile is to be used are "pleasure and business," unless otherwise stated herein:

Item 6. Unless otherwise stated herein: (a) If no automobile is described above, the total number of private passenger automobiles owned on the effective date of this policy by the named insured and by his spouse, if a resident of the same household, does not exceed one. (b) Except with respect to bailment lease, conditional sale, purchase agreement, mortgage or other encumbrance, the named insured is the sole owner of the automobile. (c) During the past three years no insurer has canceled insurance, issued to the named insured, similar to that afforded hereunder.

Countersigned: September 22, 1964 at Decatur, Georgia

OKD6019DM Cas. Und.

By

CASUALTY UNDERWRITERS, INC. 60-485

SCHEDULE OF AUTOS AND DRIVERS
ENDORSEMENT

	AUTOMOBILES		DRIVERS
1.	1955 Willis Station Wagon 2 Door	M#5472710450	Filas Norman
2.	1957 Plymouth Sedan	M#2086644	Joe Light
3.	1961 Nash Rambler	M#142623	Bill Hansen
4.	1959 Plymouth Convertible	M#4259107308	Bill Hansen
5.	1956 Cadillac Hard-Top	M#5662-020374	Betty Carman
6.	1956 Chevrolet 2 Door	M#V56B124605	Shessalonia G.Johnson
7.	1955 Chevrolet 2 Door	M#55V050722	Cordell Reagon
8.	1956 Pontiac 4 Door	M#C-755H1650	Tom Brown
9.	1962 Chevrolet Corvair 2 Door	M#2052W224976	Ron Bridgeforth
10.	1957 Chevrolet 2 Door	M#A57N-199576	Cleveland Sellers
11.	1963 Valient 4 Door	M#1132618793	Annie Moore
12.	1955 Chrysler 4 Door	M#C5512110	Cleveland Sellers
13.	1958 Chevrolet Panel Truck	M#3A58T109056	Ralph Featherstone
14.	1963 Valiant 2 Door	M#37111215	Douglas Smith
15.	1959 English Ford Consul 2 Door	M#204E145072	Ruth Howard
16.	1954 Pontiac 4 Door	M#P82H19007	James Henry
17.	1957 Volkswagen 2 Door	M#1454585	James A. Monsonis
18.	1953 Pontiac 4 Door	M#L8XH30634	John Battiste
19.	1957 Oldsmobile 4 Door	M#A253110	Mary Ellickson
20.	1958 Chevrolet 2 Door	M#B58T207817	Fred Mangrum
21.	1964 Plymouth 2 Door	M#2141-213315	Unita Blackwell
22.	1964 Plymouth 2 Door	M#2141-254323	Penny Patch
23.	1964 Plymouth 4 Door	M#2141-254293	John Harris
24.	1964 Plymouth 2 Door	M#2147-150372	Cleveland Sellers
25.	1964 Plymouth 4 Door	M#2141-207755	Joe Lewis Spigler
26.	1964 Plymouth 4 Door	M#3141-245073	Stockley Carmichael
27.	1964 Plymouth 2 Door	M#2141-276888	Don White
28.	1964 Plymouth 2 Door	M#2141-278667	Willie McGee
29.	1964 Plymouth 2 Door	M#2141-278627	James Jones
30.	1964 Plymouth 4 Door	M#3141-249039	Ivanhoe Donalson
31.	1964 Plymouth 4 Door	M#2147-134353	Carver Beblett
32.	1964 Plymouth 2 Door	M#2141-241684	Theodius Hewitt
33.	1964 Plymouth 4 Door	M#4141-255617	Francis Mitchell
34.	1964 Plymouth 4 Door	M#2541-248316	John Oneal
35.	1964 Plymouth Valiant 4 Door	M#1547-174673	Henry Bailey
36.	1964 Plymouth 4 Door	M#2147-126316	Murial Tillinghast
37.	1964 Plymouth 2 Door	M#2141-321259	Ralph Featherstone
38.	1964 Plymouth 4 Door	M#2141-245692	Stuart Ewing
39.	1964 Plymouth 2 Door	M#2141-254588	Stokeley Carmichael
40.	1955 Chevrolet 1/2 Ton	M#0948437F54X	Clifford A. Vaughf
41.	1957 Volkswagen 2 Door	M#491805	Ed Hamlett

This endorsement forms a part of Policy DM672444 issued to

Sojouner Motor Fleet, Inc. and is effective

from 9/21/64
12:01 A. M. Standard Time

Countersigned by:

Issued by: AMERICAN LIBERTY INSURANCE COMPANY

Authorized Agent

9/22/64 Casualty Underwriters, Inc.

President

A201

ENDORSEMENT

12

In consideration of an Additional Premium of $347.00 ($201.00 B.I., $130.00 P.D. and $16.00 UMC) it is agreed and understood that the following cars are added:

#56	1960	Ford Station Wagon	#0F62X100248
#57	1961	Valient 2 Door	#1116134008

NOTED

DEC 29 1964

B. H.

This endorsement forms a part of Policy DH 672444 issued to Sojourner Motor Fleet, Inc. and is effective from 12/2/64
12:01 A. M. Standard Time

Issued by: AMERICAN LIBERTY INSURANCE COMPANY

A200 President

Countersigned by:

Authorized Agent

Casualty Underwriters, Inc.

ENDORSEMENT

9

In consideration of an Additional Premium of $722.00, it is agreed and understood that the following vehicles are hereby added to this policy effective November 20, 1964.

#52	1963	Valient	#37111215
#53	1965	Plymouth Belevedere	#R157-109935
#54	1965	Dodge Panel	#1261-376137
#55	1965	Valient	#1157-113222

ADDITIONAL PREMIUM

B.I.	$418.00
P.D.	271.00
UMC	33.00
	$722.00

NOTED

DEC 29 1964

B. H.

This endorsement forms a part of Policy DM 672444 issued to

Sojouner Motor Fleet, Inc. and is effective

from 11/20/64
12:01 A. M. Standard Time

Countersigned by:

Issued by: AMERICAN LIBERTY INSURANCE COMPANY

Authorized Agent

A200 President 12/2/64 Casualty Underwriters, Inc.

ENDORSEMENT

10

In consideration of a Return Premium of $180.00 ($104.00 B.I., $68.00 P.D. and $8.00 UMC) it is agreed and understood that Item # 52 - 1963 Valient #37111215 is eliminated effective November 20, 1964.

NOTED

DEC 29 1964

B. H.

This endorsement forms a part of Policy DM 672444 issued to

Sojouner Motor Fleet, Inc. and is effective

from 11/20/64
12:01 A. M. Standard Time

Countersigned by:

Issued by: AMERICAN LIBERTY INSURANCE COMPANY

Authorized Agent

A200 Casualty Underwriters, Inc.

ENDORSEMENT

In consideration of an Additional Premium of $190.00, it is agreed and understood that the following vehicle is hereby added to this policy effective 11/4/64.

#51 1960 Falcon #0K215222190

ADDITIONAL PREMIUM	
B.I.	$110.00
P.D.	71.00
	9.00
	$190.00

NOTED

DEC 29 1964

B. H.

This endorsement forms a part of Policy DM 672444 issued to Sojourner Motor Fleet, Inc. and is effective from 11/4/64
12:01 A. M. Standard Time

Countersigned by:

Issued by: AMERICAN LIBERTY INSURANCE COMPANY

Authorized Agent

A200 President 12/2/64 Casualty Underwriters, Inc.

ENDORSEMENT

In consideration of an Additional Premium of $135.00, it is agreed and understood that the following vehicle is hereby added to this policy effective October 27, 1964.

#47 1965 Plymouth 4 Door Belvedere #3157115634

ADDITIONAL PREMIUM	
B.I.	$113.00
P.D.	73.00
UMC	9.00
	$195.00

NOTED

DEC 29 1964

B. H.

This endorsement forms a part of Policy DM 672444 issued to Sojourner Motor Fleet, Inc. and is effective from 10/27/64
12:01 A. M. Standard Time

Countersigned by:

Issued by: AMERICAN LIBERTY INSURANCE COMPANY

Authorized Agent

A200 President 12/2/64 Casualty Underwriters, Inc.

ENDORSEMENT

6

In consideration of a Return Premium of $180.00 ($104.00 B.I., $68.00 P.D. and $8.00 UMC) it is agreed and understood that Item #14 - 1963 Valiant #371111215 is eliminated effective November 20, 1964.

NOTED

DEC 29 1964

B. H.

This endorsement forms a part of Policy DM 672444 issued to

Sojouner Motor Fleet and is effective

from 11/20/64
12:01 A. M. Standard Time

Countersigned by:

Issued by: AMERICAN LIBERTY INSURANCE COMPANY

Authorized Agent

A200 President

Casualty Underwriters, Inc.

ENDORSEMENT

7

In consideration of an Additional Premium of $190.00, it is agreed and understood that the following vehicles are hereby added to this policy effective November 5, 1964.

#48	1958	Chevrolet Station Wagon	#C58J164799
#49	1965	Ford Station Wagon	#5A74C113033
#50	1965	Plymouth Valient	#1157113029

It is agreed and understood that the following vehicles are hereby eliminated from this policy effective November 5, 1964.

#18	1953	Pontiac	#L84H30634
#2	1957	Plymouth	#2086644

ADDITIONAL PREMIUM: B.I. $110.00, P.D. $71.00, UMC $9.00 - TOTAL $190.00

This endorsement forms a part of Policy DM 672444 NOTED issued to

Sojouner Motor Fleet, Inc. and is effective

DEC 29 1964

from 11/5/64
12:01 A. M. Standard Time

Countersigned by:

Issued by: AMERICAN LIBERTY INSURANCE COMPANY

Authorized Agent

A200 President 12/2/64

Casualty Underwriters, Inc.

3

ENDORSEMENT

In c[illegible]ration of [illegible] of an Additional Premium of $991.00, it is agreed [illegible] understood that the following cars and drivers are added to this policy:

Unit #	Description of Vehicle		Driver
42.	1964 Plymouth Valient 4 Dr.	#114721630	Jessie Harrison
43.	1965 Plymouth Belvedere 2 Dr.	#3157101259	Don Harris
44.	1964 Plymouth Valient 2 Dr.	#1147205008	James Jones
45.	1964 Plymouth Valient 4 Dr.	#1142721241	Bill Hansen
46.	1964 Plymouth Sta.Wagon	#Z547128571	Rev.Thomas L. Brown

ADDITIONAL PREMIUM

B.I.	$601.00
P.D.	$390.00
	$991.00

NOTED

DEC 29 1964

B. H.

This endorsement forms a part of Policy DM 672444 issued to Sojouner Motor Fleet, Inc. and is effective from 10/5/64 12:01 A. M. Standard Time

Countersigned by:

Issued by: AMERICAN LIBERTY INSURANCE COMPANY

10/21/64

President

Authorized Agent

Casualty Underwriters, Inc.

A200

[illegible]

In consideration of the premium charged, it is agreed and understood that the named insured's address is hereby amended to:

8 1/2 Raymond Street, N.W.
Atlanta, Fulton, Georgia

NOTED

DEC 29 1964

B. H.

This endorsement forms a part of Policy DM 672444 issued to Sojouner Motor Fleet, Inc. and is effective from 9/21/64 12:01 A. M. Standard Time

Countersigned by:

Issued by: AMERICAN LIBERTY INSURANCE COMPANY

President

12/2/64

Authorized Agent

Casualty Underwriters, Inc.

A200

AUTOMOBILE

AL 6650a-X
(Ed. 5-64)

A 825a

PROTECTION AGAINST UNINSURED MOTORISTS INSURANCE

(Automobile Bodily Injury Liability and Property Damage Liability)
(Specified Car Basis)
(Georgia)

This endorsement, effective 9/21/64 (12:01 A. M., standard time), forms a part of policy No. DM672444

issued to Sojouner Motor Fleet, Inc.

by AMERICAN LIBERTY INSURANCE COMPANY

NOTED
DEC 29 1964
B. H.

SCHEDULE

Limits of Liability:

Bodily Injury $10,000 each person; $20,000 each accident

Property Damage $5,000 each accident

The advance premium for this endorsement is $ 460.00

The company agrees with the named insured in consideration of the payment of the premium for this endorsement and subject to the limits of liability, exclusions, conditions and other terms of this endorsement and to the applicable terms of the policy:

INSURING AGREEMENTS

I. Damages for Bodily Injury and Property Damage Caused by Uninsured Automobiles: To pay all sums which the insured or his legal representative shall be legally entitled to recover as damages from the owner or operator of an uninsured automobile because of:

(a) bodily injury, sickness or disease, including death resulting therefrom, hereinafter called "bodily injury", sustained by the insured;

(b) injury to or destruction of an insured automobile and property owned by the insured which is contained therein, hereinafter called "property damage";

caused by accident and arising out of the ownership, maintenance or use of such uninsured automobile.

No default judgment against any known person or organization alleged to be legally responsible for the bodily injury or property damage shall be conclusive, as between the insured and the company, as to the establishment of legal liability or of the amount of damages to which the insured is legally entitled.

II. Definitions:

(a) **Insured.** The unqualified word "insured" means:

(1) the named insured;

(2) any person while occupying an insured automobile; and

(3) any person, with respect to damages he is entitled to recover because of bodily injury to which this endorsement applies sustained by an insured under (1) or (2) above.

The insurance applies separately with respect to each insured under this endorsement, but neither this provision nor application of the insurance to more than one insured shall operate to increase the limits of the company's liability.

(b) **Insured Automobile.** The term "insured automobile" means:

(1) an automobile owned by the named insured and registered in Georgia;

(2) any automobile owned by the named insured to which is attached Georgia dealer's license plates issued to the named insured;

and to which the liability coverage of the policy applies, while such automobile is being used by or with the permission of the named insured as stated in the policy.

(c) **Uninsured Automobile.** The term "uninsured automobile" means:

(1) an automobile with respect to the ownership, maintenance or use of which there is, in at least the amounts specified in Section 56-407A of the Georgia Insurance Code, neither (i) cash or securities on file with the Georgia Director of Public Safety nor (ii) a bodily injury and property damage liability bond or insurance policy, applicable at the time of the accident with respect to any person or organization legally responsible for the use of such automobile, or there is a bodily injury and property damage liability insurance policy applicable at the time of the accident but the company writing the same either has legally denied coverage thereunder or becomes insolvent within one year after such accident; or

(2) a hit-and-run automobile as defined;

but the term "uninsured automobile" shall not include:

(i) an automobile defined herein as an "insured automobile";

(ii) an automobile owned by or furnished for the regular use of the named insured;

(iii) an automobile which is owned or operated by a self-insurer within the meaning of any motor vehicle financial responsibility law, motor carrier law or any similar law;

(iv) an automobile which is owned by the United States of America, Canada, a state, a political subdivision of any such government or an agency of any of the foregoing;

(v) a land motor vehicle or trailer, if operated on rails or crawler-treads or while located for use as a residence or premises and not as a vehicle; or

(vi) a farm type tractor or equipment designed for use principally off public roads, except while actually upon public roads.

(d) **Hit-and-Run Automobile:** The term "hit-and-run automobile" means an automobile which causes bodily injury to an insured or property damage arising out of physical contact of such automobile with an insured automobile, provided: (i) there cannot be ascertained the identity of either the operator or the owner of such "hit-and-run automobile"; (ii) the insured or someone on his behalf shall have reported the accident within 10 days or as soon as practicable to the Georgia Director of Public Safety, and shall have filed with the company within 30 days thereafter a statement under oath that the insured or his legal representative has a cause or causes of action arising out of such accident for damages against a person or persons whose identity is unascertainable, and setting forth the facts in support thereof; and (iii) at the company's request, the insured or his legal representative makes available for inspection the automobile which the insured was occupying at the time of the accident.

(e) **Occupying.** The word "occupying" means in or upon or entering into or alighting from.

(f) **State.** The word "state" includes the District of Columbia, a territory or possession of the United States, and a province of Canada.

III. Policy Period, Territory: This endorsement applies only to accidents which occur on and after the effective date hereof, during the policy period and within the United States of America, its territories or possessions, or Canada.

EXCLUSIONS

This endorsement does not apply:

(a) to the first two hundred and fifty dollars of the total amount of all property damage as the result of any one accident;

(b) to bodily injury to an insured or injury to or destruction of property of an insured, with respe to which such insured, his legal representative or any person entitled to payment under this coverage shall, without written consent of the company, make any settlement with any person or organization who may be legally liable therefor;

(c) so as to inure directly or indirectly to the benefit of any workmen's compensation or disability benefits carrier or any person or organization qualifying as a self-insurer under any workmen's compensation or disability benefits law or any similar law;

(d) so as to inure directly or indirectly to the benefit of any insurer of property.

(over)

CONDITIONS

1. Policy Provisions: None of the Insuring Agreements, Exclusions, Conditions or Other Provisions of the policy shall apply to the insurance afforded by this endorsement except the Conditions "Notice" or "Notice of Accident," "Subrogation," "Changes," "Assignment," "Cancelation" and "Declarations"

2. Premium: If during the policy period the number of automobiles owned by the named insured and registered or principally garaged in Georgia or the number of Georgia dealer's license plates issued to the named insured changes, the named insured shall notify the company during the policy period of any change and the premium shall be adjusted in accordance with the manuals in use by the company. If the earned premium thus computed exceeds the advance premium paid, the named insured shall pay the excess to the company; if less, the company shall return to the named insured the unearned portion paid by such insured.

3. Proof of Claim: As soon as practicable, the insured or other person making claim shall give to the company written proof of claim, under oath if required, including full particulars of the nature and extent of the injuries, treatment, and other details entering into the determination of the amount payable hereunder. Proof of claim shall be made upon forms furnished by the company unless the company shall have failed to furnish such forms within 15 days after receiving notice of claim.

The injured person shall submit to physical examinations by physicians selected by the company when and as the company may reasonably require and he, or in the event of his incapacity his legal representative, or in the event of his death his legal representative or the person or persons entitled to sue therefor, shall upon each request from the company execute authorization to enable the company to obtain medical reports and copies of records.

The insured or other person making claim for damage to property shall file proof of loss with the company within sixty days after the occurrence of loss, unless such time is extended in writing by the company, in the form of a sworn statement setting forth the interest of the insured and of all others in the property affected, any encumbrances thereon, the actual cash value thereof at time of loss, the amount, place, time and cause of such loss, and the description and amounts of all other insurance covering such property. Upon the company's request, the insured shall exhibit the damaged property to the company.

4. Assistance and Cooperation of the Insured: After notice of claim under this endorsement, the company may require the insured to take such action as may be necessary or appropriate to preserve his right to recover damages from any person or organization alleged to be legally responsible for the bodily injury or property damage.

5. Notice of Legal Action: If, before the company makes payment of loss hereunder, the insured or his legal representative shall institute any legal action for bodily injury or property damage against any person or organization legally responsible for the use of an automobile involved in the accident, a copy of the summons and complaint or other process served in connection with such legal action shall be forwarded immediately to the company by the insured or his legal representative.

6. Limits of Liability:

(a) The limit of bodily injury liability stated in the schedule as applicable to "each person" is the limit of the company's liability for all damages, including damages for care or loss of services, because of bodily injury sustained by one person as the result of any one accident and, subject to the above provision respecting each person, the limit of such liability stated in the schedule as applicable to "each accident" is the total limit of the company's liability for all damages, including damages for care or loss of services, because of bodily injury sustained by two or more persons as the result of any one accident.

(b) The limit of property damage liability stated in the schedule as applicable to "each accident" is the total limit of the company's liability for all damages arising out of injury to or destruction of all property of one or more insureds as the result of any one accident.

(c) If claim is made under this endorsement and claim is also made against any person who is an insured under the Bodily Injury Liability or Property Damage Liability coverages of the policy because of bodily injury or property damage sustained in an accident by a person who is an insured under this endorsement:

(1) any payment made under this endorsement to or for any such person shall be applied in reduction of any amount which he may be entitled to recover from any person who is an insured under the Bodily Injury Liability or Property Damage Liability coverages; and

(2) any payment made under the Bodily Injury Liability or Property Damage Liability coverages to or for any such person shall be applied in reduction of any amount which he may be entitled to recover under this endorsement.

(d) Any amount payable to an insured under the terms of this endorsement shall be reduced by (1) all sums paid to such insured for bodily injury or property damage by or on behalf of the person legally liable therefor and (2) the amount paid and the present value of all amounts payable to such an insured under any workmen's compensation law, exclusive of non-occupational disability benefits.

7. Other Insurance: With respect to bodily injury to an insured, if the insured has other similar insurance available to him against a loss covered by this endorsement, the company shall not be liable under this endorsement for a greater proportion of such loss than the applicable limit of liability hereunder bears to the total applicable limits of liability of all valid and collectible insurance against such loss.

With respect to property damage, the insurance afforded under this endorsement shall be excess insurance over any other valid and collectible insurance against such property damage.

8. Payment of Loss by the Company: Any amount due hereunder is payable to the insured or his legal representative.

9. Action Against Company: No action shall lie against the company unless, as a condition precedent thereto, the insured or his legal representative has fully complied with all the terms of this endorsement.

.....

Authorized Representative

1964 OCT 26 AM 9 33

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

SOUTHERN DISTRICT OF MISSISSIPPI
FILED
FEB 16 1965
Joyce E. Wharton, Clerk
By [illegible] Deputy

NO. 3018(S)(C)

ARLENA L. SMITH, BOBBIE
L. McMULLEN AND BETTY
L. GOLDY . . . . . PLAINTIFFS

VERSUS

GROVER CLEVELAND HARRISON, STUDENT
NONVIOLENT COORDINATING COMMITTEE,
NATIONAL ASSOCIATION FOR THE
ADVANCEMENT OF COLORED PEOPLE,
SOUTHERN CHRISTIAN LEADERSHIP
CONFERENCE, COUNCIL OF RACIAL
EQUALITY AND COUNCIL OF FEDERATED
ORGANIZATIONS . . . . . DEFENDANTS

COMPLAINT

I.

Plaintiffs are all adult citizens of the United States. Plaintiff Smith is a resident citizen of St. Louis County, Missouri. Plaintiffs McMullen and Goldy are at the present time residents of Japan; and defendant Harrison is an adult resident of the State of Mississippi, and is available for service of process at 626 State Street, Greenwood, Mississippi.

Defendants, (Student Nonviolent Coordinating Committee, National Association for the Advancement of Colored People, Southern Christian Leadership Conference, Council of Racial Equality and Council of Federated Organizations) have not qualified to do business in the State of Mississippi however, said defendants have been conducting and carrying on business within the State of Mississippi without filing with the Secretary of State of the State of Mississippi a registered agent for service of process.

EXHIBIT "A"

Process may be had on these defendants through their lawful agent and attorney for process, the Honorable Heber Ladner, Secretary of State of the State of Mississippi, a resident citizen of Hinds County, State of Mississippi, as made and provided by Section 9352-61 of the Mississippi Code of 1942, annotated, as the last five defendants are non-residents of this state and the matter of this suit arose from Grover Cleveland Harrison's use of the public highways of the State of Mississippi. The matter in controversy exceeds, exclusive of interests and costs, the sum of $10,000.00; there is diversity of citizenship among the parties; the controversy between the parties arose in the Southern District of the State of Mississippi, and therefore this court has jurisdiction of this cause.

II.

On the 19th day of November, 1964, plaintiffs' father and mother, Robert S. Lambert and Lydia Lambert, were in an automobile being driven by Robert S. Lambert and owned by the same. Said automobile was being driven North upon United States Highway 49 in Wiggins, Stone County, Mississippi, and thereupon were hit by an automobile, under the operation of defendant Grover Cleveland Harrison.

As the direct and proximate result of said collision, plaintiffs' father and mother were injured to the extend that Lydia Lambert died Thursday afternoon shortly after the collision and Robert S. Lambert died from injuries received in this collision the following Saturday afternoon.

III.

Plaintiffs' charge that the accident aforesaid and the resulting deaths were directly and proximately caused by the following acts of negligence of Grover Cleveland Harrison

while in the employ of the Student Nonviolent Coordinating Committee, National Association for the Advancement of Colored People, Southern Christian Leadership Conference, Council of Racial Equality and Council of Federated Organizations and acting within the scope of his employment as transportation officer for the defendants, to-wit:

(a) Plaintiffs charge that the defendant Grover Cleveland Harrison was guilty of wanton and willful negligence in the operation of the vehicle he was driving in the following particulars:

(1) In violation of law, he drove the car in a wanton, reckless and negligent manner.

(2) He with wantonness failed to keep his high-powered vehicle under free and easy control so as to be able to stop in time to avoid killing the defendants' parents.

(3) He operated his vehicle in such a wanton manner that he caused the death of two law abiding citizens, by crossing over the center of said highway and he, with wantonness propelling his automobile into the vehicle driven by Robert S. and Lydia Lambert, the deceased.

IV.

As the direct and proximate result of the wanton negligence complained of above, causing the excruticating pain, suffering and finally the death of Robert S. and Lydia Lambert, the plaintiffs' parents were taken from them by death brought about by the wantonness of Grover Cleveland Harrison.

V.

WHEREFORE plaintiffs bring suit and demand judgment of and from the defendants, jointly and severally, for $500,000.00

actual damages and $1,000,000.00 punitive damages, plus interest and all costs. The defendants will take notice that the plaintiffs demand a jury to determine the issues involved in this controversy at the time of the trial of this cause.

Mrs. Arlena L. Smith
Plaintiff

Mrs. Bobbie L. McMullen
Plaintiff

Mrs. Betty L. Goldy
Plaintiff

James Armstrong Walters
519 North Second Avenue
Columbus, Mississippi

By: James A. Walters
James A. Walters

Attorney for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

ARLENA L. SMITH, BOBBYE L. McMULLEN AND BETTY L. COLDY, PLAINTIFFS VS. GROVER CLEVELAND HARRISON, STUDENT NONVIOLENT COORDINATING COMMITTEE, NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, SOUTHERN CHRISTIAN LEADERSHIP CONFERENCE, COUNCIL OF RACIAL EQUALITY AND COUNCIL OF FEDERATED ORGANIZATIONS, DEFENDANTS	CIVIL ACTION NO. 3018

ANSWER OF DEFENDANT STUDENT NONVIOLENT COORDINATING COMMITTEE

Pursuant to leave granted enlarging the time in which to plead, comes the STUDENT NONVIOLENT COORDINATING COMMITTEE, named as one of several defendants in the above styled civil action, and files this its answers to the plaintiffs' complaint as follows:

FIRST DEFENSE

The plaintiffs' complaint fails to state a claim upon which relief can be granted.

SECOND DEFENSE

1. For want of sufficient information, defendant Student Nonviolent Coordinating Committee (hereinafter SNCC) can neither admit nor deny the allegations of paragraph 1 of the complaint that

> "Plaintiffs are all adult citizens of the United States. Plaintiff Smith is a resident citizen of St. Louis County, Missouri. Plaintiffs McMullen and Coldy are at the present time residents of Japan; and defendant Harrison is an adult resident of the State of Mississippi, and is available for service of process at 626 State Street, Greenwood, Mississippi."

Further answering paragraph 1, defendant admits that the amount in controversy exceeds $10,000.00, exclusive of interests and costs. Defendant denies that it is not qualified to do business in the State of Mississippi but, for want of information, can neither admit nor deny said

allegations as they pertain to other defendants.

Defendant denies the remaining allegations of paragraph 1 of the complaint.

2. Defendant denies the allegations of paragraphs 2, 3 (a) (1) (2) (3), and 4 of the plaintiffs' complaint.

3. Further answering, defendant avers that the negligence of plaintiffs' decedents contributed proximately to their demise and that the decedents were not exercising ordinary care for their own safety at the time of the accident.

WHEREFORE, defendant having fully answered prays that it be discharged and that all costs be taxed against the plaintiffs.

JACK H. YOUNG
YOUNG AND HALL
115½ FARRISH STREET
JACKSON, MISSISSIPPI

HOWARD MOORE, JR.
859½ HUNTER STREET, N. W.
ATLANTA, GEORGIA 30314

ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing answer upon counsel of record for the plaintiffs by depositing a copy of the same in the United States Mail, properly stamped and addressed.

This 10th day of April, 1965.

JACK H. YOUNG

file Rec'd 4/16/65

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

ARLENA L. SMITH, BOBBIE L.
McMULLEN AND BETTY L. GOLDY — PLAINTIFFS

VS — NO. 3018 (S)(C)

GROVER CLEVELAND HARRISON, STUDENT
NONVIOLENT COORDINATING COMMITTEE,
NATIONAL ASSOCIATION FOR THE
ADVANCEMENT OF COLORED PEOPLE,
SOUTHERN CHRISTIAN LEADERSHIP
CONFERENCE, COUNCIL OF FEDERATED
ORGANIZATIONS — DEFENDANTS

MOTION TO DISMISS

The defendant Southern Christian Leadership Conference moves the Court as follows:

I

To dismiss the action because the complaint fails to state a claim against the defendant Southern Christian Leadership Conference upon which relief can be granted.

II

To dismiss the action or in lieu thereof to quash the return of service of summons on the grounds: (a) That the defendant Southern Christian Leadership Conference is a corporation organized under the laws of the State of Georgia and is not subject to process within the Southern District of Mississippi, and (b) that the defendant Southern Christian Leadership Conference has not been properly served with process in this action.

III

To dismiss the action on the ground that it is in the wrong District because the defendant Southern Christian Leadership Conference is a corporation incorporated under the laws of the State of Georgia and is not licensed to do business, does not do business and has not

done business in the Southern District of Mississippi.

IV

To dismiss the action on the ground that the plaintiffs herein have failed to join an indispensable party to this action, namely, the owner of the car alleged to have been involved in the accident complained of in the plaintiffs' complaint.

V

To dismiss the action on the ground that it is in the wrong District because neither all of the plaintiffs nor all of the defendants reside in the Southern District of Mississippi and thus, venue is improper.

SOUTHERN CHRISTIAN LEADERSHIP CONFERENCE

BY Jack H Young
Its Attorney

JACK H. YOUNG
115½ North Farish Street
Jackson, Mississippi 39201

CERTIFICATE OF SERVICE

I, the undersigned Jack H. Young, attorney for the defendant Southern Christian Leadership Conference, do hereby certify that I have this day mailed by United States mail, postage prepaid, a copy of the above and foregoing Motion to Dismiss to the Honorable James A. Walters, 519 North Second Avenue, Columbus, Mississippi, attorney for the plaintiffs.

This the 9th day of April, A. D., 1965.

Jack H Young

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

ARLENA L. SMITH, BOBBIE L.
McMULLEN AND BETTY L. GOLDY — PLAINTIFFS

VS — NO. 3018 (S)(C)

GROVER CLEVELAND HARRISON, STUDENT
NONVIOLENT COORDINATING COMMITTEE,
NATIONAL ASSOCIATION FOR THE
ADVANCEMENT OF COLORED PEOPLE,
SOUTHERN CHRISTIAN LEADERSHIP
CONFERENCE, COUNCIL OF FEDERATED
ORGANIZATIONS, COUNCIL OF RACIAL EQUALITY — DEFENDANTS

ANSWER OF DEFENDANT CONGRESS OF RACIAL EQUALITY

Comes now the defendant Congress of Racial Equality (improperly referred to in the complaint as the "Council" of Racial Equality), by and through its attorneys, and in answer to the complaint filed herein would show unto the Court as follows:

I

Defendant Congress of Racial Equality does not possess sufficient information to form a belief as to the residence of the plaintiffs and the defendant Grover Cleveland Harrison.

Defendant Congress of Racial Equality admits that it has not qualified to do business in Mississippi, but denies that it has been conducting and carrying on business within the State of Mississippi.

Defendant Congress of Racial Equality denies that the Honorable Heber Ladner, Secretary of State of the State of Mississippi is its lawful agent for service of process.

Defendant Congress of Racial Equality admits that it is a non-resident of Mississippi but does not have sufficient knowledge to form a belief as to the residence of defendants Student Nonviolent Coordination Committee, National Association

for the Advancement of Colored People. On information and belief the Southern Christian Leadership Conference is a non-resident Georgia Corporation.

Defendant Congress of Racial Equality has no information concerning the location of, or the manner in which, this claim arose and therefore does not have sufficient information to form a belief as to same.

Defendant Congress of Racial Equality has no knowledge or information upon which to form a belief as to the amount in controversy and therefore neither admits nor denies the same.

Defendant Congress of Racial Equality has no information concerning the residence of plaintiffs or defendants Grover Cleveland Harrison, Student Nonviolent Coordinating Committee, National Association for the Advancement of Colored People, and therefore cannot form a belief concerning diversity of citizenship between the parties.

Defendant Congress of Racial Equality does not have sufficient information to form a belief as to the place where the controversy arose.

II

Defendant Congress of Racial Equality is without knowledge as to the facts alleged in Paragraph II of the complaint and therefore cannot form a belief as to those facts, and therefore neither admits nor denies the same.

III

Defendant Congress of Racial Equality denies that the defendant Grover Cleveland Harrison was in the employ of the Congress of Racial Equality or that he was acting within the scope of his employment.

Defendant Congress or Racial Equality is without knowledge of the remaining allegations in Paragraph III of the complaint and therefore cannot form a belief as to these allegations.

IV

Defendant Congress of Racial Equality is without knowledge as to the allegations of Paragraph IV of the complaint and therefore cannot form a belief as to those allegations.

First Affirmative Defense

This Court lacks jurisdiction over the person of defendant Congress of Racial Equality. Service of process was made on Emily Gordon, who was not authorized to accept same for this defendant and who was not an employee or agent of Congress of Racial Equality. Service made on the Secretary of State of Mississippi pursuant to Sec. 9352-61 of the Mississippi Code of 1942 is ineffective since defendant Congress of Racial Equality has neither qualified to do business, nor does business within the State of Mississippi.

Second Affirmative Defense

Venue is improper. Defendant Congress of Racial Equality is a New York Corporation which has neither qualified to do business nor transacts business in Mississippi. On information and belief defendant Southern Christian Leadership Conference is a Georgia Corporation that neither has qualified to do business nor does business in Mississippi. Therefore, not all of the defendants reside in this judicial district.

Third Affirmative Defense

The plaintiffs' complaint fails to state a claim upon which relief can be granted.

Now having fully answered, defendant Congress of Racial Equality prays that this suit be dismissed as to it at

the cost of the plaintiffs.

s/ R. Jess Brown

R. Jess Brown
125½ N. Farish
Jackson, Mississippi

Alvin J. Bronstein
603 N. Farish
Jackson, Mississippi

Carl Rachlin
38 Park Row
New York, N. Y.

CERTIFICATE OF SERVICE

I, the undersigned R. Jess Brown, one of the attorneys for the defendant Congress of Racial Equality, do hereby certify that I have this day mailed by United States mail, postage prepaid, a copy of the above and foregoing Answer to the Honorable James A. Walters, 519 North Second Avenue, Columbus, Mississippi, Attorney for the plaintiffs.

This 22nd day of April, 1965.

R. Jess Brown

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

AMERICAN LIBERTY INSURANCE COMPANY, a corporation, PLAINTIFF, VS. ARLENA L. SMITH; BOBBIE L. McNULLEN; BETTY L. GOLDY; GROVER CLEVELAND HARRISON; SOJOURNER MOTOR FLEET, INC.; STUDENT NON-VIOLENT COORDIN ATING COMMITTEE; NATIONAL ASSOCIATION FOR THE ADVANCE-MENT OF COLORED PEOPLE; SOUTHERN CHRISTIAN LEADERSHIP CONFERENCE; COUNCIL OF RACIAL EQUALITY and COUNCIL OF FEDERATED ORGANIZATIONS, jointly and severally, DEFENDANTS.	)	CIVIL ACTION NO. 3040(a)(c)

ANSWER OF DEFENDANT CONGRESS OF RACIAL EQUALITY

Comes now the defendant Congress of Racial Equality (improperly designated in the complaint as the "Council of Racial Equality"), by and through its attorneys, and for its answer to the complaint herein alleges as follows:

1. Said Defendant denies having knowledge or information sufficient to form a belief of the citizenship or domicile of the plaintiffs and other defendants herein except it avers this defendant is a New York corporation, and further denies knowledge or information sufficient to form a belief as to the remaining allegations of paragraph 1.

2. Said Defendant denies knowledge or information sufficient to form a belief as to the allegations of paragraph 2.

3. Said Defendant denies knowledge or information sufficient to form a belief as to the allegations of paragraph 3.

4. Said Defendant denies knowledge or information sufficient to form a belief as to any alleged automobile accident, or any injuries resulting therefrom or any other

allegations in paragraph 4, but acknowledges that a suit has been filed and that this defendant has been named a defendant therein.

5. With respect to paragraph 5, said Defendant denies knowledge or information sufficient to form a belief as to whether said policy covered said accident, and acknowledges that Plaintiff has advised said Defendant that it will not defend the law suit referred to therein.

6. Said Defendant denies knowledge or information sufficient to form a belief as to the allegations in paragraph 6, except it denies that it in any manner caused a breach of said policy referred to therein or that it deprived Plaintiff of anything whatsoever.

7. Said Defendant denies that the prosecution of the suit referred to in paragraph 7, could result in irreparable damage and injury to Plaintiff.

First Affirmative Defense

This Court lacks jurisdiction over the person of defendant Congress of Racial Equality. Service made on the Secretary of State of Mississippi pursuant to Sec. 9352-61 of the Mississippi Code of 1942 is ineffective since defendant Congress of Racial Equality has neither qualified to do business, nor does business within the State of Mississippi.

Second Affirmative Defense

Venue is improper. Defendant Congress of Racial Equality is a New York Corporation which has neither qualified to do business nor transacts business in Mississippi. On information and belief defendant Southern Christian Leadership Conference is a Georgia Corporation that neither has qualified to do business nor does business in Mississippi. Therefore, not all of the defendants reside in this judicial district.

WHEREFORE said Defendant Congress of Racial Equality prays judgment dismissing the complaint herein and for such other, further and different relief as may be just and proper, together with the costs and disbursements of this action.

s/ R. Jess Brown

R. Jess Brown
125½ N. Farish Street
Jackson, Mississippi

Alvin J. Bronstein
603 N. Farish Street
Jackson, Mississippi

Carl Rachlin
38 Park Row
New York, N. Y.

CERTIFICATE OF SERVICE

I, the undersigned R. Jess Brown, one of the attorneys for the defendant Congress of Racial Equality, do hereby certify that I have this day mailed by United States mail, postage prepaid, a copy of the above and foregoing Answer to George E. Morse, Esq., Hatten Building, Gulfport, Mississippi and Paul W. Brock, Esq., 622 First National Bank Building, Mobile, Alabama, Attorneys for Plaintiffs.

This 30th day of April, 1965.

s/ R. Jess Brown

R. Jess Brown

4/19/65 Copy to Bronstein

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

ARLENA L. SMITH, BOBBIE L.
McMULLEN AND BETTY L. GOLDY — PLAINTIFFS

VS — NO. 3018 (S)(G)

GROVER CLEVELAND HARRISON, STUDENT
NONVIOLENT COORDINATING COMMITTEE,
NATIONAL ASSOCIATION FOR THE
ADVANCEMENT OF COLORED PEOPLE,
SOUTHERN CHRISTIAN LEADERSHIP
CONFERENCE, COUNCIL OF FEDERATED
ORGANIZATIONS — DEFENDANTS

ANSWER OF DEFENDANT NATIONAL ASSOCIATION FOR THE
ADVANCEMENT OF COLORED PEOPLE

Comes now the defendant National Association for the Advancement of Colored People, by and through its attorneys, and in answer to the complaint filed herein would show unto the Court as follows:

I

Defendant National Association for the Advancement of Colored People is without knowledge as to the residence of the plaintiffs and the defendant Harrison, and , therefore, neither admits nor denies the same.

Defendant National Association for the Advancement of Colored People denies that it is not qualified to do business in the State of Mississippi and that it has not filed with the Secretary of the State of Mississippi a registered agent for service of process.

II

Defendant National Association for the Advancement of Colored People is without knowledge as to the facts alleged in Paragraph II of the complaint and neither admits nor denies the same.

III

Defendant National Association for the Advancement of Colored

People denies that the defendant Grover Cleveland Harrison was in the employ of the National Association for the Advancement of Colored People and acting within the scope of his employment; defendant National Association for the Advancement of Colored People avers that the defendant Grover Cleveland Harrison is not and has never been one of its agents or employees.

Defendant National Association for the Advancement of Colored People is without knowledge of the remaining allegations of the complaint and neither admits nor denies the same.

IV

Defendant National Association for the Advancement of Colored People is without knowledge as to the allegations of Paragraph IV of the complaint and neither admits nor denies the same.

Now having fully answered, defendant National Association for the Advancement of Colored People prays that the suit be dismissed as to it at the cost of the plaintiffs.

ROBERT L. CARTER
BARBARA A. MORRIS
20 West 40th Street
New York, New York 10018

JACK H. YOUNG
115½ North Farish Street
Jackson, Mississippi 39201

ATTORNEYS FOR THE DEFENDANT
NATIONAL ASSOCIATION FOR THE
ADVANCEMENT OF COLORED PEOPLE

BY _____
Jack H. Young
Of Counsel

CERTIFICATE OF SERVICE

I, the undersigned Jack H. Young, one of the attorneys for the defendant National Association for the Advancement of Colored People, do hereby certify that I have this day mailed by United States mail, postage prepaid, a copy of the above and foregoing Answer to the Honorable James A. Walters, 519 North Second Avenue, Columbus, Mississippi, Attorney for the plaintiffs.

This _____ day of April, 1965.

_____

NAACP

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

AMERICAN LIBERTY INSURANCE COMPANY, a corporation Plaintiff VS ARLENA L. SMITH, ET AL Defendants	CIVIL ACTION NO. 3040 (S)(C)

ANSWER OF DEFENDANT NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE

Comes now the defendant National Association for the Advancement of Colored People, by and through its attorneys, and in answer to the complaint filed herein would show unto the Court as follows:

I

Defendant National Association for the Advancement of Colored People is without knowledge as to the allegations of the residences of the other defendants, and neither denies nor admits the same.

Defendant National Association for the Advancement of Colored People admits that the amount in controversy exceeds $10,000.00, exclusive of interest and costs.

II

Defendant National Association for the Advancement of Colored People is without knowledge as to the allegations of Paragraph 2, and neither denies or admits the same.

III

Defendant National Association for the Advancement of Colored People is without knowledge as to the allegations of Paragraph 3, and neither denies nor admits the same.

F

EXHIBIT "F"

IV

Defendant National Association for the Advancement of Colored People does not have sufficient information to either admit or deny the allegations of Paragraph 4, except that the defendant admits that a suit has been filed as mentioned in said paragraph.

V

Defendant National Association for the Advancement of Colored People is without sufficient information to admit or deny the allegations of Paragraph 5.

VI

Defendant National Association for the Advancement of Colored People is without sufficient information to admit or deny the allegations of Paragraph 6, but defendant denies that this defendant has breached any terms and conditions of the insurance policy mentioned in said suit and further denies that it has deprived the plaintiff of the opportunity to conduct and control the defense of said suit.

VII

Defendant National Association for the Advancement of Colored People denies that the prosecution of said suit will result in irreparable damage and injury to the plaintiff.

Now having fully answered, defendant National Association for the Advancement of Colored People prays that it be dismissed with its costs.

NATIONAL ASSOCIATION FOR THE
ADVANCEMENT OF COLORED PEOPLE

BY Jack H. Young
Its Attorney

ROBERT L. CARTER
BARBARA A. MORRIS
20 West 40th Street
New York, New York 10018

JACK H. YOUNG
115½ North Farish Street
Jackson, Mississippi 39201

CERTIFICATE OF SERVICE

I, the undersigned Jack H. Young, attorney for the defendant National Association for the Advancement of Colored People, do hereby certify that I have this day mailed by United States mail, postage prepaid, a copy of the above and foregoing Answer to the Honorable George E. Morse, Hatten Building, Gulfport, Mississippi; Honorable Paul W. Brock, 622 First National Bank Building, Mobile, Alabama; Honorable James A. Walters, 519 North Second Avenue, Columbus, Mississippi; Honorable Howard Moore, Jr., 859½ Hunter Street, N. W., Atlanta, Georgia; and Honorable Al Brunstein, 603 North Farish Street, Jackson, Mississippi.

This the 3rd day of May, A. D., 1965.

Jack H. Young

SCLC

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

AMERICAN LIBERTY INSURANCE COMPANY, a corporation Plaintiff VS ARLENA L. SMITH, ET AL Defendants	CIVIL ACTION NO. 3040 (S)(C)

MOTION TO DISMISS

The defendant Southern Christian Leadership Conference moves the Court as follows:

I

To dismiss the action because the complaint fails to state a claim against the defendant Southern Christian Leadership Conference upon which relief can be granted.

II

To dismiss the action or in lieu thereof to quash the return of service of summons on the grounds: (a) That the defendant Southern Christian Leadership Conference is a corporation organized under the laws of the State of Georgia and is not subject to process within the Southern District of Mississippi, and (b) that the defendant Southern Christian Leadership Conference has not been properly served with process in this action.

III

To dismiss the action on the ground that it is in the wrong District because the defendant Southern Christian Leadership Conference is a corporation incorporated under the laws of the State of Georgia and is not licensed to do business, does not do business and

H

EXHIBIT "H"

has not done business in the Southern District of Mississippi.

IV Venue

To dismiss the action on the ground that it is in the wrong District because neither all of the plaintiffs nor all of the defendants reside in the Southern District of Mississippi and thus, venue is improper.

SOUTHERN CHRISTIAN LEADERSHIP CONFERENCE

BY Jack H Young
Its Attorney

JACK H. YOUNG
115½ North Farish Street
Jackson, Mississippi 39201

CERTIFICATE OF SERVICE

I, the undersigned Jack H. Young, attorney for the defendant Southern Christian Leadership Conference, do hereby certify that I have this day mailed by United States mail, postage prepaid, a copy of the above and foregoing Motion to Dismiss to the Honorable George E. Morse, Hatten Building, Gulfport, Mississippi; Honorable Paul W. Brock, 622 First National Bank Building, Mobile, Alabama; Honorable James A. Walters, 519 North Second Avenue, Columbus, Mississippi; Honorable Howard Moore, Jr., 859½ Hunter Street, N. W., Atlanta, Georgia; and Honorable Al Brunstein, 603 North Farish Street, Jackson, Mississippi.

This the 3rd day of May, A. D., 1965.

Jack H Young

Harrison

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

AMERICAN LIBERTY INSURANCE COMPANY, a corporation, Plaintiff,	*	Civil Action No. 3040(S)(C)
vs.	*	
ARLENA L. SMITH, et al., Defendants.	*	

ANSWER OF DEFENDANT GROVER CLEVELAND HARRISON

1. The complaint fails to state a claim against this defendant for which relief may be granted.

2. For want of sufficient information or knowledge, defendant can neither admit nor deny the allegations of paragraphs 1, 2, 3, 5, 6, and 7 of the complaint.

3. Answering paragraph 4, defendant admits that he was involved in the accident described in said paragraph. For want of sufficient information or knowledge, defendant can neither admit nor deny the remaining allegations of said paragraph.

WHEREFORE, having fully answered, defendant prays that he be discharged and costs taxed against the plaintiff.

JACK H. YOUNG
115½ North Farrish Street
Jackson, Mississippi

HOWARD MOORE, JR.
859½ Hunter Street, N.W.
Atlanta, Georgia 30314

ATTORNEYS FOR DEFENDANT

3

CERTIFICATE OF SERVICE

I hereby certify that I have served copies of the foregoing plea and answer upon all parties to the within captioned civil action by depositing copies of the same in the United States Mail, properly stamped, and addressed to the regular office and place of business of each party's counsel of record.

This 4th day of May, 1965.

Jack H Young

JACK YOUNG
Of Counsel

SNCC

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

AMERICAN LIBERTY INSURANCE COMPANY, a corporation, Plaintiff,	*	
vs.	*	Civil Action No. 3040(S)(C)
ARLENA L. SMITH, et al., Defendants.	*	

ANSWER OF DEFENDANT STUDENT
NONVIOLENT COORDINATING
COMMITTEE

1. The complaint fails to state a claim against this defendant for which relief may be granted.

2. For want of sufficient information, defendant can neither admit nor deny the allegations of paragraphs 1, 2, 3, 4, 5, 6, and 7 of the complaint.

3. For further answer, defendant avers that it is an unincorporated association.

WHEREFORE, having fully answered, defendant prays that it be discharged and costs taxed against the plaintiff.

JACK H. YOUNG
117½ North Farrish Street
Jackson, Mississippi

HOWARD MOORE, JR.
859½ Hunter Street, N.W.
Atlanta, Georgia 30314

ATTORNEYS FOR DEFENDANT

G

EXHIBIT "G"

CERTIFICATE OF SERVICE

I hereby certify that I have served copies of the foregoing plea and answer upon all parties to the within captioned civil action by depositing copies of the same in the United States Mail, properly stamped, and addressed to the regular office and place of business of each party's counsel of record.

This 4th day of May, 1965.

Jack M. Young

JACK M. YOUNG
Of Counsel

Sojourner

IN THE UNITED DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

AMERICAN LIBERTY INSURANCE COMPANY, a corporation,	*	
Plaintiff,	*	Civil Action No. 3040(S)(C)
vs.	*	
ARLENA L. SMITH, et al.,	*	
Defendants.	*	

ANSWER OF DEFENDANT SOJOURNER
MOTOR FLEET, INC.

1. The complaint fails to state a claim against this defendant for which relief may be granted.

2. For want of sufficient information, defendant can neither admit nor deny the allegations of paragraphs 1, 3, 4, and 7 of the complaint.

3. Defendant admits that an actual controversy of a justificable nature exists between it and the plaintiff, respecting rights and liabilities under a liability insurance policy. However, for want of sufficient information, defendant can neither admit nor deny the remaining allegations of paragraph 2 as they pertain to other defendants.

4. Defendant admits that plaintiff has refused to extend coverage or to defend the claim on behalf of any person or persons protected by said policy. Defendant neither admits nor denies the remaining allegations of paragraph 5 of the complaint.

5. Defendant denies the allegations of paragraph 6 of the complaint.

D

EXHIBIT "D"

WHEREFORE, defendant prays that it be discharged and that the costs be taxed against the plaintiffs.

JACK H. YOUNG
115½ North Farrish St.
Jackson, Mississippi

Howard Moore, Jr.
859½ Hunter St., N.W.
Atlanta, Georgia 30314

Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that I have served copies of the foregoing plea and answer upon all parties to the within captioned action by depositing copies of the same in the United States Mail, properly stamped, and addressed to the regular office and place of business of each party's counsel of record.

This 4th day of May, 1965.

JACK YOUNG
Of Counsel

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT

OF MISSISSIPPI, SOUTHERN DIVISION

AMERICAN LIBERTY INSURANCE COMPANY, a corporation, Plaintiff, Vs. ARLENA L. SMITH; BOBBIE L. McMULLEN; BETTY L. GOLDY; GROVER CLEVELAND HARRISON; SOJOURNER MOTOR FLEET, INC.; STUDENT NON-VIOLENT COORDINATING COMMITTEE; NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE; SOUTHERN CHRISTIAN LEADERSHIP CONFERENCE; COUNCIL OF RACIAL EQUALITY and COUNCIL OF FEDERATED ORGANIZATIONS, jointly and severally, Defendants.	)	CIVIL ACTION NO. 3040 (S)(C)

ANSWER OF DEFENDANTS: ARLENA L. SMITH, BOBBIE L. McMULLEN AND BETTY L. GOLDY

1. The plaintiff has failed to state a claim against the above named defendants for which relief may be justifiable.

2. For lack of information, the above defendants cannot admit nor deny the allegations of the plaintiff as set down in paragraph 1, 2, 3, 5 and 6 of the plaintiff.

3. Defendants answer paragraph 4, saying that their father and mother were involved in an automobile accident with an automobile operated by Grover Cleveland Harrison. As a result of this accident the mother of defendants died on the date of the accident, as described in paragraph 4 of the plaintiff, and their father died three days later.

4. Defendants answer paragraph 7, and avers that the representative of plaintiff called on their counsel in regard to said accident as stated in paragraph 4 of plaintiffs complaint for Declaratory Judgment.

EXHIBIT "I"

Wherefore, defendants pray this court will determine that the plaintiff is liable in this proceeding; that there is a cause of action arising out of said automobile accident; that the plaintiff's are jointly liable under their policy agreement; that an order restraining the further prosecution of said suit would result in unjustifiable damage and injury to the defendants.

Defendants pray, that having fully answered, they be discharged and cost taxed against the plaintiff.

James A. Walters

JAMES A. WALTERS
519 NORTH SECOND AVENUE
COLUMBUS, MISSISSIPPI

ATTORNEY FOR DEFENDANTS

CERTIFICATE OF SERVICE

I hereby certify that I have served copies of the foregoing answer upon all parties to the within captioned civil action by depositing copies of the same in the United States Mail, properly stamped, and addressed to the regular office and place of business of each party's counsel of record.

This 20th day of May, 1965.

James A. Walters

JAMES A. WALTERS

OF COUNSEL

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

ARLENA L. SMITH, BOBBYE L. McMULLEN AND BETTY L. COLDY, PLAINTIFFS	
VS.	CIVIL ACTION NO. 3018
GROVER CLEVELAND HARRISON, STUDENT NONVOILENT COORDINATING COMMITTEE, NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, SOUTHERN CHRISTIAN LEADERSHIP CONFERENCE, COUNCIL OF RACIAL EQUALITY AND COUNCIL OF FEDERATED ORGANIZATIONS, DEFENDANTS	

ANSWER OF DEFENDANT COUNCIL OF FEDERATED ORGANIZATIONS

Pursuant to leave granted enlarging the time in which to plead, comes the Council of Federated Organizations, named as one of several defendants in the above styled civil action, and files this its answer to the plaintiffs' complaint as follows:

FIRST DEFENSE

The plaintiffs' complaint fails to state a claim upon which relief can be granted.

SECOND DEFENSE

1. For want of sufficient information, defendant Council of Federated Organizations (hereinafter COFO) can neither admit nor deny the allegations of paragraph 1 of the complaint that

> "Plaintiffs are all adult citizens of the United States. Plaintiff Smith is a resident citizen of St. Louis County, Missouri. Plaintiffs McMullen and Coldy are at the present time residents of Japan; and defendant Harrison is an adult resident of the State of Mississippi, and is available for service of process at 626 State Street, Greenwood, Mississippi."

Further answering paragraph 1, defendant admits that the amount in controversy exceeds $10,000.00, exclusive of interests and costs. Defendant denies that it is not qualified to do business in the State of Mississippi but, for want of information, can neither admit nor deny said allegations as they pertain to other defendants.

2. Defendant denies the allegations of paragraphs 2, 3 (a) (1) (2) (3), and 4 of the plaintiffs' complaint.

3. Further answering, defendant avers that the negligence of plaintiffs' decedents contributed proximately to their demise and that the decedents were not exercising ordinary care for their own safety at the time of the accident.

WHEREFORE, defendant having fully answered, prays that it be discharged and that all costs be taxed against the plaintiffs.

SMITH, WALTZER, JONES & PEEBLES
1006 Baronne Building
New Orleans, Louisiana 70112

By_____
BENJAMIN E. SMITH

_____
LEONARD H. ROSENTHAL
406 Medical Building
Jackson, Mississippi

ATTORNEYS FOR DEFENDANT

CERTIFICATE

I hereby certify that copy of the above and foregoing Answer has been served upon counsel of record for the plaintiffs via United States mail this_____day of May, 1965.

_____
BENJAMIN E. SMITH

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DISTRICT

ARIENA L. SMITH, NORMA
L. McMULLEN AND DEVVY
L. COLDY,
PLAINTIFFS

VS.

GROVER CLEVELAND HARRISON, STUDENT
SURVEILLANCE COORDINATING COMMITTEE,
NATIONAL ASSOCIATION FOR THE ADVANCEMENT
OF COLORED PEOPLE, SOUTHERN CHRISTIAN
LEADERSHIP CONFERENCE, COUNCIL OF
RACIAL EQUALITY AND COUNCIL OF FEDERATED
ORGANIZATIONS,
DEFENDANTS

CIVIL ACTION NO. 3018 (a)(c)

ANSWER OF DEFENDANT GROVER CLEVELAND HARRISON

Pursuant to leave granted enlarging the time in which to plead, comes GROVER CLEVELAND HARRISON, named as one of several defendants in the above styled civil action, and files this his answer to the plaintiffs' complaint as follows:

FIRST DEFENSE

Plaintiffs' complaint fails to state a claim upon which relief can be granted.

SECOND DEFENSE

1. For want of sufficient information, defendant can neither admit nor deny the allegations of paragraph 1 of the complaint that

> "Plaintiffs are all adult citizens of the United States. Plaintiff Smith is a resident citizen of St. Louis County, Missouri. Plaintiffs McMullen and Coldy are at the present time residents of Japan."

Further answering paragraph 1, defendant denies the allegation that he "is an adult resident of the State of Mississippi, and is available for service of process at 626 State Street, Greenwood, Mississippi.

As to the remainder of paragraph 1, defendant admits that the amount in controversy exceeds $10,000.00 exclusive of interest and costs, but for want of sufficient information defendant can neither admit nor deny the allegations of paragraph 1 as they pertain to other defendants.

2. Defendant admits that Robert S. Lambert and Lydia Lambert were involved in an automobile accident on November 19, 1964 in Wiggins, Stone County, Mississippi, but denies the other allegations of paragraph 2 of the complaint.

3. Defendant denies the allegations of paragraphs 3 (a) (1) (2) (3) and 4 of the complaint.

4/ Further answering, defendant avers that the negligence of plaintiffs' decedents contributed proximately to their demise and that the decedents were not exercising ordinary care for their own safety at the time of the accident.

WHEREFORE, defendant having fully answered prays that he be discharged and that all costs be taxed against the plaintiffs.

JAMES E. YOUNG
YOUNG AND HALL
115½ PARKER STREET
JACKSON, MISSISSIPPI

HOWARD MOORE, JR.
859½ HUNTER STREET, N. W.
ATLANTA, GEORGIA 30314

ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of the foregoing answer upon counsel of record for the plaintiffs by depositing a copy of the same in the United States Mail, properly stamped and addressed.

JAMES E. YOUNG

IN THE UNITED STATES DISTRICT COURT FOR THE

SOUTHERN DISTRICT OF MISSISSIPPI

SOUTHERN DIVISION

AMERICAN LIBERTY INSURANCE COMPANY, a Corporation,	:	
Plaintiff,	:	
v.	:	Civil Action No. 3040(s)(c)
ARLENA L. SMITH, et al,	:	
Defendants.	:	

NOTICE OF DEPOSITIONS

TO: Arlena L. Smith,
Bobbie L. McMullen
and Betty L. Goldie
c/o James Armstrong Walters
Attorney at Law
519 North 2nd Avenue
Columbus, Mississippi

Grover Cleveland Harrison
c/o Jack H. Young
Attorney at Law
115½ North Farish Street
Jackson, Mississippi

and

c/o Howard Moore, Jr.
Attorney at Law
859½ Hunter Street, N. W.
Atlanta, Georgia

Sojourner Motor Fleet, Inc.
c/o Jack H. Young
Attorney at Law
115½ North Farish Street
Jackson, Mississippi

and

c/o Howard Moore, Jr.
Attorney at Law
859½ Hunter Street, N. W.
Atlanta, Georgia

National Association for the Advancement
of Colored People
c/o Jack H. Young
Attorney at Law
115½ North Farish Street
Jackson, Mississippi

and

c/o Barbara A. Morris
and Robert L. Carter
Attorneys at Law
20 West 40th Street
New York, New York

Southern Christian Leadership Conference
c/o Jack H. Young
Attorney at Law
115½ North Farish Street
Jackson, Mississippi

Student Non-Violent Co-ordinating
Committee
c/o Jack H. Young
Attorney at Law
115½ North Farish Street
Jackson, Mississippi

and

c/o Howard Moore, Jr.
Attorney at Law
859½ Hunter Street, N. W.
Atlanta, Georgia

Congress of Racial Equality
c/o Jess Brown
Attorney at Law
125½ North Farish Street
Jackson, Mississippi

and

c/o Alvin J. Bronstein
Attorney at Law
602 North Farish Street
Jackson, Mississippi

and

c/o Carl Rachlin
Attorney at Law
38 Park Row
New York, New York

Charlaine vote later

Council of Federated Organizations
38 Park Row
New York, New York

Certified Mail
Return Receipt
Requested

and

c/o Benjamin E. Smith
Attorney at Law
1006 Baronne Building
New Orleans, Louisiana

and

c/o Dave Dennis,
Robert Moses,
Bob Weil and
Emily Gordon
1017 Lynch Street
Jackson, Mississippi

Please take notice that at the hours and on the days shown below the plaintiff in the above-styled action will take the depositions upon oral examination of the persons named below pursuant to the Federal Rules of Civil Procedure at the offices of Ross & Finch, Attorneys at Law, 1013 William Oliver Building, Atlanta, Georgia before an officer duly authorized by law to take depositions. You are invited to attend and cross-examine.

PERSONS TO BE DEPOSED:

Grover C. Harrison 112 Everette Street Jackson, Mississippi	August 26 9:00 a.m.
Joy Jean Deese 2448 Woodacres Road, N.E. Atlanta, Georgia	August 26 11:00 a.m.
Miss Elizabeth R. Garman 8½ Raymond Street, N.W. Atlanta, Georgia	August 26 1:30 p.m.

Constancia Romilly August 26 3:30 p.m.
8½ Raymond Street, N.W.
Atlanta, Georgia

Randolph Blackwell August 27 9:00 a.m.
Co-ordinating Director
Southern Christian Leadership Conference
334 Auburn Avenue, N.E.
Atlanta, Georgia

Mr. Clyde Woolen August 27 11:00 a.m.
Casualty Underwriters, Inc.
P. O. Box 690
Decatur, Georgia

Mr. W. G. Stephens, Jr. August 27 1:30 p.m.
Southern General Agents, Inc.
Suite 909
15 Peachtree Building
Atlanta, Georgia

This the 13th day of August, 1965.

MORSE AND MORSE
Attorneys at Law
Hatten Building
Gulfport, Mississippi

HAND, ARENDALL, BEDSOLE
GREAVES & JOHNSTON
Attorneys at Law
Post Office Box 123
Mobile, Alabama

By: Paul W. Brock
Paul W. Brock

CERTIFICATE OF SERVICE

I hereby certify that I have mailed a true and correct copy of the foregoing Notice of Depositions to:

James Armstrong Walters as Attorney for the defendants Arlena L. Smith, Bobbie L. McMullen and Betty L. Goldie

Jack H. Young as Attorney for the defendants Grover Cleveland Harrison, Sojourner Motor Fleet, Inc.,

National Association for the Advancement of Colored People, Southern Christian Leadership Conference, and Student Non-Violent Co-ordinating Committee

Howard Moore, Jr. as Attorney for defendants Grover Cleveland Harrison, Sojourner Motor Fleet, Inc., and Student Non-Violent Co-ordinating Committee

Barbara A. Morris and Robert L. Carter as Attorneys for the defendant National Association for the Advancement of Colored People

Jess Brown as Attorney for the defendant Congress of Racial Equality

Alvin J. Bronstein as Attorney for the defendant Congress of Racial Equality

Benjamin E. Smith as Attorney for the defendant Council of Federated Organizations

Dave Dennis, Robert Moses, Bob Weil and Emily Gordon

by depositing a copy of same in the United States mail, postage prepaid, addressed to said attorneys and individuals at their offices and addresses as shown in the above notice on this, the 13th day of August, 1965.

Paul W. Brock

Paul W. Brock, Attorney for Plaintiff

IN THE UNITED STATES DISTRICT COURT FOR THE

SOUTHERN DISTRICT OF MISSISSIPPI

SOUTHERN DIVISION

AMERICAN LIBERTY INSURANCE COMPANY, a Corporation,	:	
Plaintiff	:	
v.	:	Civil Action No. 3040(s)(c)
ARLENA L. SMITH, et al,	:	
Defendants.	:	

NOTICE: CHANGE OF TIMES OF DEPOSITIONS

TO: Arlena L. Smith,
Bobbie L. McMullen
and Betty L. Goldie
c/o James Armstrong Walters
Attorney at Law
519 North 2d Avenue
Columbus, Mississippi

Grover Cleveland Harrison
c/o Jack H. Young
Attorney at Law
115½ North Farish Street
Jackson, Mississippi

and

c/o Howard Moore, Jr.
Attorney at Law
859½ Hunter Street, N. W.
Atlanta, Georgia

Sojourner Motor Fleet, Inc.
c/o Jack H. Young
Attorney at Law
115½ North Farish Street
Jackson, Mississippi

and

c/o Howard Moore, Jr.
Attorney at Law
859½ Hunter Street, N. W.
Atlanta, Georgia

National Association for the Advancement
of Colored People
c/o Jack H. Young
Attorney at Law
115½ North Farish Street
Jackson, Mississippi

and

c/o Barbara A. Morris
and Robert L. Carter
Attorneys at Law
20 West 40th Street
New York, New York

Southern Christian Leadership Conference
c/o Jack H. Young
Attorney at Law
115½ North Farish Street
Jackson, Mississippi

Student Non-Violent Co-ordinating
Committee
c/o Jack H. Young
Attorney at Law
115½ North Farish Street
Jackson, Mississippi

and

c/o Howard Moore, Jr.
Attorney at Law
859½ Hunter Street, N. W.
Atlanta, Georgia

Congress of Racial Equality
c/o Jess Brown
Attorney at Law
125½ North Farish Street
Jackson, Mississippi

and

c/o Alvin J. Bronstein
Attorney at Law
602 North Farish Street
Jackson, Mississippi

and

c/o Carl Rachlin
Attorney at Law
38 Park Row
New York, New York

Council of Federated Organizations
38 Park Row
New York, New York

Certified Mail
Return Receipt
Requested

and

c/o Benjamin E. Smith
Attorney at Law
1006 Baronne Building
New Orleans, Louisiana

and

c/o Dave Dennis,
Robert Moses,
Bob Weil and
Emily Gordon
1017 Lynch Street
Jackson, Mississippi

Please take notice that in an effort to accommodate the times of taking these depositions with the schedules of adverse attorneys, it has become necessary to make the following changes. The persons originally scheduled to be deposed on August 27 will be deposed on August 26 at the same times as shown on the original notice of depositions. The persons scheduled to be deposed on August 26 will be deposed on August 27 at the same times as shown on the original notice of depositions. The new schedule will be as follows:

PERSONS TO BE DEPOSED:

Randolph Blackwell — August 26 9:00 a.m.
Co-ordinating Director
Southern Christian Leadership Conference
334 Auburn Avenue, N. E.
Atlanta, Georgia

Mr. Clyde Woolen — August 26 11:00 a.m.
Casualty Underwriters, Inc.
P. O. Box 690
Decatur, Georgia

Mr. W. G. Stephens, Jr. Southern General Agents, Inc. Suite 909 15 Peachtree Building Atlanta, Georgia	August 26	1:30 p.m.
Grover C. Harrison 112 Everette Street Jackson, Mississippi	August 27	9:00 a.m.
Joy Jean Deese 2448 Woodacres Road, N. E. Atlanta, Georgia	August 27	11:00 a.m.
Miss Elizabeth R. Garman 8½ Raymond Street, N. W. Atlanta, Georgia	August 27	1:30 p.m.
Constancia Romilly 8½ Raymond Street, N. W. Atlanta, Georgia	August 27	3:30 p.m.

This the 19th day of August, 1965.

MORSE AND MORSE
Attorneys at Law
Hatten Building
Gulfport, Mississippi

HAND, ARENDALL, BEDSOLE,
GREAVES & JOHNSTON
Attorneys at Law
Post Office Box 123
Mobile, Alabama

By: Paul W. Brock
PAUL W. BROCK

CERTIFICATE OF SERVICE

I hereby certify that I have mailed a true and correct copy of the foregoing Notice: Change of Times of Depositions to:

James Armstrong Walters as Attorney for the defendants Arlena L. Smith, Bobbie L. McMullen and Betty L. Goldie

Jack H. Young as Attorney for the defendants Grover Cleveland Harrison, Sojourner Motor Fleet, Inc.,

National Association for the Advancement of Colored People, Southern Christian Leadership Conference, and Student Non-Violent Co-ordinating Committee

Howard Moore, Jr. as Attorney for defendants Grover Cleveland Harrison, Sojourner Motor Fleet, Inc., and Student Non-Violent Co-ordinating Committee

Barbara A. Morris and Robert L. Carter as Attorneys for the defendant National Association for the Advancement of Colored People

Jess Brown as Attorney for the defendant Congress of Racial Equality

Alvin J. Bronstein as Attorney for the defendant Congress of Racial Equality

Benjamin E. Smith as Attorney for the defendant Council of Federated Organizations

Dave Dennis, Robert Moses, Bob Weil and Emily Gordan

by depositing a copy of same in the United States mail, postage prepaid, addressed to said attorneys and individuals at their offices and addresses as shown in the above notice on this, the 19th day of August, 1965.

Paul W. Brock

Paul W. Brock, Attorney for Plaintiff

Received 7/2/65

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

CIVIL ACTION NO. 3040

AMERICAN LIBERTY INSURANCE COMPANY — PLAINTIFF

VS.

ARLENA L. SMITH, ET AL. — DEFENDANT

MOTION TO DISMISS

Now comes the Council of Federated Organizations, a defendant in the above styled and numbered cause, by its attorney of record, and moves the Court to dismiss the Council of Federated Organizations as a defendant for lack of jurisdiction of the said party defendant, and as grounds therefor would show unto the Court the following, to-wit:

That this Court lacks jurisdiction over the Council of Federated Organizations in as much as the said party defendant is an unincorporated association thereby being immune from suit as an entity.

See 17(b)

L. H. Rosenthal
COUNCIL OF FEDERATED ORGANIZATIONS
By: L. H. ROSENTHAL

L. H. Rosenthal
Suite 406
518 N. Capitol St.
Jackson, Mississippi

SMITH, WALTERS, JONES & PEEBLES
Benjamin E. Smith
1006 Baronne Building
505 Baronne Street
New Orleans, Louisiana

j

EXHIBIT "J"

NOTICE OF MOTION

Please take notice, that the undersigned will bring the above and foregoing Motion to Dismiss on for hearing before Judge Harold Cox in the United States District Court room at Biloxi, Mississippi, on the 6th day of September, 1965 at 9:00 o'clock a.m. of that day or as soon thereafter as counsel can be heard.

L. H. ROSENTHAL

I certify that copies of the foregoing Motion to Dismiss and Notice of Motion have been mailed postage prepaid to George E. Morse, Hatten Building, Gulfport, Mississippi and to Paul W. Brock, 622 First National Bank Building, Mobile, Alabama.

This the 30th day of August, 1965.

L. H. ROSENTHAL

SEP 24 1965

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

AMERICAN LIBERTY INSURANCE COMPANY — PLAINTIFF

VS — CIVIL ACTION NO. 3040 (S)(C)

ARLENA L. SMITH, ET AL — DEFENDANTS

MOTION FOR LEAVE TO WITHDRAW AS COUNSEL
FOR THE THREE NAMED DEFENDANTS

Comes now Jack H. Young, one of the attorneys of record for the defendants, Grover Cleveland Harrison, Sojourner Motor Fleet, Inc., and Student Non-Violent Coordinating Committee, and moves the Court for leave to withdraw as counsel for the above-named defendants and assigns as reason therefor, the following:

That prior to his employment by said defendants, he had been retained to represent two other defendants in the case and that it now appears that there might be a conflict of interest between the parties who first employed him and the three defendants named herein.

Respectfully submitted,

s/Jack H. Young

JACK H. YOUNG, Attorney for Defendants
Grover Cleveland Harrison, Student
Non-Violent Coordinating Committee,
Sojourner Motor Fleet, Inc., National
Association for the Advancement of
Colored People, Southern Christian
Leadership Conference

CERTIFICATE OF SERVICE

This is to certify that I have this day mailed by United States mail, postage prepaid, copies of the above and foregoing motion to the following attorneys of record in the above captioned case:

Hon. James A. Walters
519 North Second Avenue
Columbus, Mississippi

Hon. George E. Morse
Hatten Building
Gulfport, Mississippi

Hon. Alvin J. Bronstein
603 North Farish Street
Jackson, Mississippi

Hon. Robert L. Carter
Hon. Barbara A. Morris
20 West 40th Street
New York, New York 10018

Hon. Paul W. Brock
622 First National Bank Building
Mobile, Alabama

Hon. L. H. Rosenthal
518 East Capitol Street
Jackson, Mississippi

Hon. Carl Rachlin
38 Park Avenue
New York, New York

Hon. Howard Moore, Jr.
859½ Hunter Street, N. W.
Atlanta, Georgia

This 20th day of September, 1965.

s/ Jack H. Young
Jack H. Young

C.O.F.O. negligence suit

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

AMERICAN LIBERTY INSURANCE COMPANY, a corporation,	I	
Plaintiff,	I	CIVIL ACTION NO. 3040(s)(c)
vs.	I	
ARLENA L. SMITH, et al.,	I	
Defendants.	I	
	I	

MOTION OF DEFENDANTS GROVER CLEVELAND HARRISON, SOJOURNER MOTOR FLEET, INC., AND STUDENT NON-VIOLENT COORDINATING COMMITTEE TO ALLOW APPEARANCE OF LOCAL COUNSEL

Pursuant to the order of the Court dated September 21, 1965, defendants, GROVER CLEVELAND HARRISON, SOJOURNER MOTOR FLEET, INC., and STUDENT NONVIOLENT COORDINATING COMMITTEE, through their undersigned attorney, move the Court for an order permitting the appearance of Eddie H. Tucker, Esquire, 115½ North Farish Street, Jackson, Mississippi, as attorney of record for these defendants. As grounds therefor, defendants aver:

1. Eddie H. Tucker, Esquire, is a duly licensed member of the Bar of the State of Mississippi and is admitted to practice before the Bar of this Honorable Court.

2. Eddie H. Tucker, Esquire, has agreed to represent these defendants for a valuable consideration, and they have agreed to retain the said Eddie H. Tucker as their attorney.

WHEREFORE, defendants move the Court for an order allowing the appearance of the said Eddie H. Tucker, Esquire.

Howard Moore, Jr.

HOWARD MOORE, JR.
859½ HUNTER ST., N. W.
ATLANTA, GEORGIA 30314

ATTORNEY FOR DEFENDANTS

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing motion by depositing copies of the same in a properly addressed and stamped envelope with sufficient postage affixed thereto to mail the same first-class air mail delivery in the United States Mail, United States Postal Annex, Atlanta, Georgia.

This 24th day of September, 1965.

Howard Moore Jr.

HOWARD MOORE, JR.

IN THE
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

AMERICAN LIBERTY INSURANCE COMPANY, a corporation,	*	
Plaintiff,	*	
vs.	*	CIVIL ACTION NO. 3040(s)(c)
ARLENA L. SMITH, et al.	*	
	*	

NOTICE OF DEPOSITION TAKING

TO:

AMERICAN LIBERTY INSURANCE COMPANY
Morse & Morse
Attorneys at Law
Hatton Building
Gulfport, Mississippi

Hand, Arendall, Bedsole, Graves & Johnston
Paul Brock, Esquire
Post Office Box 123
Mobile, Alabama

ARLENA L. SMITH, BOBBIE L. McCULLEN and BETTY L. GOLDIE
James A. Walters, Esquire
519 North Second Avenue
Columbus, Mississippi

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE
c/o Jack H. Young, Esquire
115½ North Farish Street
Jackson, Mississippi

and

Robert L. Carter, Esquire
20 West 40th Street
New York, New York

SOUTHERN CHRISTIAN LEADERSHIP CONFERENCE, INC.
c/o Jack H. Young, Esquire
115½ North Farish Street
Jackson, Mississippi

and
Melvyn Zarr, Esquire
Suite 2030
10 Columbus Circle
New York, New York 10019

CONGRESS OF RACIAL EQUALITY
c/o R. Jess Brown, Esquire
125½ North Farish Street
Jackson, Mississippi

and

Alvin J. Bronstein, Esquire
603 North Farish Street
Jackson, Mississippi

and

Carl Rachlin, Esquire
38 Park Rowe
New York, New York

COUNCIL OF FEDERATED ORGANIZATIONS
c/o Benjamin E. Smith, Esquire
1006 Baronne Building
New Orleans, Louisiana

Please take notice that defendants, GROVER CLEVELAND HARRISON, SOJOURNER MOTOR FLEET, INC., and STUDENT NONVIOLENT COORDINATING COMMITTEE, will take the testimony, on oral examination, fur use as evidence, discovery, and for all other lawful purposes, of Miss Betty Sue Carney and Mr. J. A. Perkerson, before a Notary Public in and for Fulton County, Georgia, at the F. B. Schultz and Company, 181 Tenth Street, Northeast, Atlanta, Georgia, on the 4th day of October, 1965, commencing at noon of that day, and thereafter from day to day as the taking of said depositions may be adjourned. You are invited to appear and take such part in the examination as you may be advised and as shall be fit and proper.

This 24th day of September, 1965.

Howard Moore, Jr.

HOWARD MOORE, JR.
859½ Hunter St., N. W.
Atlanta, Georgia 30314

Eddie H. Tucker
115½ North Farish St.
Jackson, Mississippi

ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing notice to take depositions by depositing copies of the same in properly addressed and stamped envelopes with sufficient postage affixed thereto to mail the same first-class, air mail delivery, in the United States Mail, United States Postal Annex, Atlanta, Georgia.

This 29th day of September, 1965.

Howard Moore, Jr.

HOWARD MOORE, JR.

IN THE
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

AMERICAN LIBERTY INSURANCE COMPANY, a corporation, Plaintiff,	*	
-vs-	*	CIVIL ACTION NO. 3040(s)(c)
ARLENA L. SMITH, et al.	*	

RESPONSE OF DEFENDANT GROVER CLEVELAND HARRISON TO THE ORDER OF THE COURT TO APPEAR FOR THE TAKING OF HIS DEPOSITION

Defendant GROVER CLEVELAND HARRISON, through his attorney, reports to the Court that he has complied with the order of September 16, 1965, directing him to appear at the Federal Building, Biloxi, Mississippi, Saturday, September 25, 1965, at 9:00 A. M., for the taking of his deposition by the above-named plaintiff, by appearing at the Federal Building, Biloxi, Mississippi, Friday, September 24, 1965, and being deposed between the hours of 11:00 A. M. and 3:00 P. M., by counsel for the plaintiff and by Mr. Alvin Bronstein, counsel for defendant Congress of Racial Equality and of counsel to defendants National Association for the Advancement of Colored People, Southern Christian Leadership Conference, Inc., and Council of Federated Organizations.

Defendant Harrison is advised that notice was given all counsel, including Mr. James A. Walters, of the change in date and that the change was made to accommodate Mr. Bronstein and agreed to by counsel for the plaintiff and the undersigned attorney for defendant Harrison.

Defendant further states that his sole reason for not

being present for the taking of his deposition in Atlanta, Georgia, August 27, 1965 is that he did not receive notice prior to the scheduled taking.

Respectfully submitted,

Howard Moore, Jr.

HOWARD MOORE, JR.
859½ Hunter St., N. W.
Atlanta, Georgia 30314

ATTORNEY FOR DEFENDANT GROVER CLEVELAND HARRISON

IN THE UNITED STATES DISTRICT COURT FOR THE

SOUTHERN DISTRICT OF MISSISSIPPI

SOUTHERN DIVISION

AMERICAN LIBERTY INSURANCE COMPANY, a corporation,	*	
Plaintiff,	*	
vs.	*	CIVIL ACTION NO. 3040(s)(c)
ARLENA L. SMITH, et al.,	*	
Defendants.	*	
	*	

MOTION OF DEFENDANTS GROVER CLEVELAND HARRISON, STUDENT NON-VIOLENT COORDINATING COMMITTEE, AND THE SOJOURNER MOTOR FLEET, INC., TO DISMISS

Defendants, GROVER CLEVELAND HARRISON, STUDENT NON-VIOLENT COORDINATING COMMITTEE, and SOJOURNER MOTOR FLEET, INC., move this Honorable Court for an order dismissing plaintiff's complaint and this civil action. As grounds therefore, defendants aver:

1. The Court lacks jurisdiction over the civil action alleged in plaintiff's complaint due to a lack of total diversity of citizenship between all parties plaintiff and all parties defendant. Plaintiff and defendant Grover Cleveland Harrison are both citizens of the State of Alabama.

2. This motion is based upon (a) the admission of the plaintiff in paragraph one (1) of its complaint that it "is a corporation organized and existing under the laws of the State of Alabama, with its principal place of business in the City of Birmingham, Alabama; (B) the deopsition of Grover Claveland Harrison, and (C) the verified allegations of this motion.

EXHIBIT "K"

WHEREFORE, defendants move the Court for an order dismissing the complaint and the civil action therein alleged with prejudice and costs taxed against the plaintiff.

Howard Moore Jr.

HOWARD MOORE, JR.
859½ HUNTER ST., N. W.
ATLANTA, GEORGIA 30314

EDDIE H. TUCKER
1154 NORTH FARISH STREET
JACKSON, MISSISSIPPI

ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

I hereby certify that I have, this day, served a copy of the foregoing Motion and Notice upon counsel of record for plaintiffs by depositing a copy of same in the United States Mail, properly stamped and addressed.

This 17th day of November, 1965.

Howard Moore Jr.
HOWARD MOORE, JR.

V E R I F I C A T I O N

STATE OF GEORGIA:

COUNTY OF FULTON:

PERSONALLY appeared before the undersigned authority, duly authorized by law to administer oaths, GROVER CLEVELAND HARRISON, who, after being duly sworn, deposes and says that he is the movant in the above and foregoing motion to dismiss, and that the facts alleged therein are true.

Grover Cleveland Harrison

GROVER CLEVELAND HARRISON

Subscribed and sworn to before me,

this 10th day of NOVEMBER, 1965.

Alice M. Lewis

Notary Public, Georgia State at Large
My Commission Expires June 24, 1968

NOTARY PUBLIC

IN THE UNITED STATES DISTRICT COURT FOR THE

SOUTHERN DISTRICT OF MISSISSIPPI

SOUTHERN DIVISION

AMERICAN LIBERTY INSURANCE COMPANY, a corporation,	*	
Plaintiff,	*	
-vs-	*	CIVIL ACTION No. 3040(a)(c)
ARLENA L. SMITH, et al.,	*	
Defendants.	*	
	*	

AMENDMENT OF GROVER CLEVELAND HARRISON, SOJOURNER MOTOR FLEET, INC., AND STUDENT NON-VIOLENT COORDINATING COMMITTEE TO THEIR MOTION FOR WANT OF JURISDICTION.

Defendants, GROVER CLEVELAND HARRISON, SOJOURNER MOTOR FLEET, INC., AND STUDENT NON-VIOLENT COORDINATING COMMITTEE, amend their previously filed motion to dismiss by adding the following paragraph to be known as paragraph 3; namely:

"3. Further, defendant Student Nonviolent Coordinating Committee is an unincorporated association with its principal place of business and office in Atlanta, Fulton County, Georgia. Certain of defendants' members and officers are citizens of the State of Alabama. In support of the allegations of this paragraph, defendants attach a Certificate of Search from the Secretary of State of the State of Georgia and the affidavit of John Lewis, as Exhibits "A" and "B", respectively."

WHEREFORE, defendants move this Court for an order allowing this Amendment and ordering plaintiff's complaint dismissed with prejudice and costs taxed against the plaintiff.

859½ Hunter St., N. W.
Atlanta, Georgia 30314

115½ North Farish St.
Jackson, Mississippi

HOWARD MOORE, JR.

EDDIE H. TUCKER

ATTORNEYS FOR DEFENDANTS

EXHIBIT "L"

State of Georgia

STATE OF GEORGIA 1776

OFFICE OF SECRETARY OF STATE

I, Ben W. Fortson, Jr., Secretary of State of the State of Georgia, do hereby certify that

on searching the corporation records in this office, we fail to find any record of a corporation by the name of "STUDENT NON-VIOLENT COORDINATING COMMITTEE" as the same appears of file and record in this office.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of office, at the Capitol, in the City of Atlanta, this 24th day of November in the year of our Lord One Thousand Nine Hundred and Sixty Five and of the Independence of the United States of America the One Hundred and Ninetieth.

Ben W. Fortson Jr.

SECRETARY OF STATE, EX-OFFICIO CORPORATION COMMISSIONER OF THE STATE OF GEORGIA.

EXHIBIT "A"

GEORGIA, FULTON COUNTY:

AFFIDAVIT

Personally appeared JOHN LEWIS before the undersigned officer authorized by law to administer oaths and first being duly sworn upon oath, depose and say:

I am Chairman of the Student Nonviolent Coordinating Committee (hereinafter SNCC). SNCC is an unincorporated association. Its principal place of business is located at 360 Nelson Street, Southwest, Atlanta Fulton County, Georgia.

Based upon my own personal knowledge and from examination of payroll records kept and maintained by SNCC, I know that on April 7, 1965 Willie M. Scott, Willie Squire, and Terry Shaw, all citizens of the State of Alabama, residing in the City of Selma, were members of SNCC. Willie M. Scott was at that time receiving a subsistence allowance for services rendered as an office worker in Selma, Alabama. Willie Squire was at that time and continues to be employed by SNCC as a photographer. Terry Shaw was at that time and continues in the employment of SNCC as a Field Secretary, and in the formulation and execution of its programs and policies.

I am a citizen of the State of Alabama and domiciled in the City of Troy, Alabama, where I was born and reared. I am one of the founding members of SNCC and have served as its chairman for the past two years.

This affidavit is made upon the basis of facts within my own personal knowledge and to be used in legal proceedings.

S/ John Lewis
JOHN LEWIS

Subscribed and sworn to before me,
this 27th day of November, 1965.

S/ Alice M. Lewis
NOTARY PUBLIC
Notary Public, Georgia State at Large
My Commission Expires June 24, 1968

EXHIBIT "L"

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing amendment to defendants' motion to dismiss upon counsel for the plaintiff by depositing a copy of the same in the United States Mail, in a properly stamped and addressed envelop, with sufficient postage affixed thereto to mail the same first-class, special delivery, air mail, return-receipt-requested.

I further certify that I have served all other counsel for the defendants named in this action by depositing a copy of the same in properly addressed and stamped envelopes in the United States Mail.

This 27th day of November, 1965.

S/ Howard Moore, Jr.

HOWARD MOORE, JR.

IN THE UNITED STATES DISTRICT COURT FOR THE

SOUTHERN DISTRICT OF MISSISSIPPI

SOUTHERN DIVISION

AMERICAN LIBERTY INSURANCE COMPANY, a corporation

PLAINTIFF

vs. CIVIL ACTION NO. 3040(s) (c)

ARLENA L. SMITH, et al

DEFENDANTS

SOUTHERN DISTRICT OF MISSISSIPPI
FILED
DEC 3 1965
Loryce E. Wharton, Clerk
By Deputy

ORDER

This cause coming on this day to be heard on motion of the Plaintiff to require the defendant, Sojourner Motor Fleet, Inc., to elaborate or clarify its response to requests of the plaintiff for admissions Nos. 12 through 16, and to clarify its answer to interrogatory No. 11 propounded by the plaintiff to Sojourner Motor Fleet, Inc., and upon the motion of Grover Cleveland Harrison, Student Nonviolent Coordinating Committee, and Sojourner Motor Fleet, Inc., and upon argument of counsel, it appears to the Court and it is so ordered that the answer of Sojourner Motor Fleet, Inc. to requests for admissions Nos. 12 through 16 be treated as an admission of the truthfulness of the facts stated in requests for admissions Nos. 12 through 16; that counsel endeavor to clarify any deficiencies in answers to interrogatories by correspondence between themselves; that with respect to the motion of Grover Cleveland Harrison, Student Nonviolent Coordinating Committee and Sojourner Motor Fleet, Inc., plaintiff shall have five days from date of this order within which to file

EXHIBIT "M"

affidavits or other evidence in opposition to said motion to dismiss, and movants, Grover Cleveland Harrison, Student Nonviolent Coordinating Committee and Sojourner Motor Fleet, Inc., shall have ten days from date of this order to file any counter-affidavits or other evidence in support of said motion to dismiss.

ORDERED in Jackson, Mississippi, this 3rd day of December, 1965.

/s/ Harold Cox

UNITED STATES DISTRICT JUDGE

A TRUE COPY, I HEREBY CERTIFY.
LORYCE E. WHARTON, CLERK
BY: Lorye Wharton
~~Deputy~~ Clerk

Dated: 12-3-65

IN THE UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF MISSISSPIIP
SOUTHERN DIVISION

ARLENA L. SMITH, et al., Plaintiffs, vs. GROVER CLEVELAND HARRISON, et al., Defendants.	CIVIL ACTION NO. 3018(s)(C)

NOTICE OF MOTION

TO:

M. B. MONTGOMERY, ESQ.
BARNETT, MONTGOMERY, McCLINTOCK
& CUNNINGHAM
315-21 BARNETT BUILDING
JACKSON, MISSISSIPPI

JACK H. YOUNG, ESQ.
115½ NORTH FARISH STREET
JACKSON, MISSISSIPPI

R. JESS BROWN, ESQ.
125 NORTH FARISH STREET
JACKSON, MISSISSIPPI

ROBERT L. CARTER, ESQ.
20 WEST 40th STREET
NEW YORK, NEW YORK 10018

ALVIN BRUNSTEIN, ESQ.
603 NORTH FARISH STREET
JACKSON, MISSISSIPPI

CALR RACHLIN, ESQ.
38 PARK ROW
NEW YORK, NEW YORK

BENJAMIN E. SMITH, ESQ.
SMITH, WALTZER, JONES & PEEBLES
1006 Baronne Building
New Orleans, Louisiana

LEONARD ROSENTHAL, ESQ.
406 MEDICAL BUILDING
JACKSON, MISSISSIPPI

You are hereby notified that defendants GROVER

CLEVELAND HARRISON and the STUDENT NONVIOLENT COORDINATING COMMITTEE will bring the attached motion on for hearing Monday, March 7, 1966, at 9:00 a. m., in the United States Courtroom, United States Post Office Building, Biloxi, Mississippi, or as soon thereafter as counsel can be heard. You are invited to appear and take such part in these proceedings as you think appropriate.

This 4th day of March, 1966.

Eddie H. Tucker

EDDIE H. TUCKER
115½ North Farish St.
Jackson, Mississippi

HOWARD MOORE, JR.
859½ Hunter St., N. W.
Atlanta, Ga. 30314

ATTORNEYS FOR DEFENDANTS.

IN THE UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

ARLENA L. SMITH, et al., Plaintiffs, -vs- GROVER CLEVELAND HARRISON, et al., Defendants.	CIVIL ACTION NO. 3018(c)(S)

MOTION TO CONTINUE THE CASE OR IN THE ALTERNATIVE REQUEST FOR AN ORDER FROM THE COURT TO THE CLERK AND JURY COMMISSIONER REQUIRING THAT THEY BRING IN A VENIRE FOR THE TRIAL OF THE CASE FREE FROM DISCRIMINATION BECAUSE OF RACE OR COLOR.

Defendants, GROVER CLEVELAND HARRISON and the STUDENT NON-VIOLENT COORDINATING COMMITTEE (SNCC) by their attorney, Eddie H. Tucker, move this Court for an order continuing this case and directing the Clerk of this Court and the jury commissioner to bring in a venire free of discrimination or segregation because of race or color.

As grounds therefor, defendants show:

1. Defendant Grover Cleveland Harrison is a Negro citizen of the State of Alabama. This defendant, at the time of the incident alleged in the complaint, was associated with and involved in the efforts of Negro citizens of the State of Mississippi to acquire equal political and voting rights, equal educational opportunities, equal employment and equal treatment from the police and courts of the State of Mississippi.

2. Defendant SNCC is popularly considered and known as a civil rights organization. Said defendant is an unincorporated association of students and former students dedicated to

the attainment of equal educational, cultural, economic, and political rights for underprivileged and culturally deprived people in the United States without regard to their race or color. Since and before November 19, 1964, SNCC has been and continues to be engaged in and associated with the efforts of the Negro people of the State of Mississippi to obtain equal rights.

3. These defendants are advised that there is now pending in this Court a plenary civil action brought on behalf of several Negro citizens of the State of Mississippi, seeking injunctive relief and money damages against the Clerk and Jury Commissioner on the grounds that they have in the past and continue to systematically and arbitrarily exclude or include qualified Negro citizens on the jury lists of this Court. Said civil action challenges the constitutionality of the organization of jury lists in this Court including the Southern Division on the grounds that a custom, usage, policy and practice has been and continues to be employed which violates Section 243, 18 United States Code, Sections 1861, 1862, 1863, and 1864, 28 United States Code, and the Fifth and Seventh Amendments, United States Constitution. The style and number of said case being Samuel Bailey, et al., v. Robert Thomas, Civil Action No. 3674(J)(c). Continuance of this case pending the outcome of Civil Action No. 3674(J)(c) will obviate unnecessary costs and duplication of effort.

4. Members of the Negro race, otherwise qualified to serve as trial or traverse jurors in the United States District Court for the Southern Division, have been and continue to be systematically and arbitrarily excluded or included for jury service in the Southern Division because of their race or color and will continue to be discriminated against on the grounds of their race or color in the organization of the venire from which the jurors will be drawn to try this case in

violation of the statutes and constitutional provisions cited above.

WHEREFORE, defendants move this Court for an order continuing this case or in the alternative, after receiving the evidence, direct the Clerk and Jury Commissioner to bring in a venire free of discrimination on the basis of race or color or previous condition of servitude.

Eddie H. Tucker

EDDIE H. TUCKER
115½ North Farish St.
Jackson, Mississippi

Howard Moore Jr.

HOWARD MOORE, JR.
859½ Hunter St., N. W.
Atlanta, Ga. 30314

COUNSEL FOR MOVANTS

CERTIFICATE OF SERVICE

I hereby certify that I have served copies of the above and foregoing notice of motion and motion attached thereto upon all counsel listed in said notice by depositing copies of same in the United States Mail with adequate postage thereon.

This 4th day of February, 1966.

Edelia H. Tucker

OF COUNSEL FOR DEFENDANTS

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

SOUTHERN DISTRICT OF MISSISSIPPI
FILED
FEB 17 1966
ROBERT C. THOMAS, CLERK
BY
DEPUTY

CIVIL ACTION NUMBER 3040

AMERICAN LIBERTY INSURANCE COMPANY — PLAINTIFF

V.

ARLENA L. SMITH, ET AL — DEFENDANTS

JUDGMENT

THE COURT having heard and considered this case on motion to dismiss for lack of jurisdiction, and being of the opinion that it has no jurisdiction herein for the reasons stated in a memoranda of even date herewith;

IT IS ORDERED AND ADJUDGED that this Court has no jurisdiction of this case and that it is, therefore, dismissed at the cost of the plaintiff to be taxed according to law and for which process may issue.

ORDERED AND ADJUDGED, this February 17, A.D., 1966.

s/ Harold Cox
UNITED STATES DISTRICT JUDGE

EXHIBIT "N"

A TRUE COPY, I HEREBY CERTIFY.
ROBERT C. THOMAS, CLERK
BY:
Deputy Clerk
Dated: 5/27/66

SOUTHERN DISTRICT OF MISSISSIPPI
FILED
FEB 17 1966
ROBERT C. THOMAS, CLERK
BY DEPUTY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

CIVIL ACTION NUMBER 3040

AMERICAN LIBERTY INSURANCE COMPANY PLAINTIFF

V.

ARLENA L. SMITH, ET AL DEFENDANTS

This is a suit for a declaratory judgment on a casualty insurance policy issued by the plaintiff to Sojourner Motor Fleet, Inc. Most of the evidence before the Court on the motion to dismiss for lack of jurisdiction hinges around the residence of defendant, Grover Cleveland Harrison. It is established to the satisfaction of the Court that the residence of that defendant is Atlanta, Georgia and not Yantley, Alabama. But, throughout this proceeding and upon a careful examination of this entire file, it is not made apparent that this Court has any jurisdiction of this case. The plaintiff is a resident of Albama. The defendants certainly do not all live in Mississippi. Yet, a suit cannot be maintained in this Court on diversity jurisdiction unless either all of the plaintiffs or all of the defendants reside in Mississippi. That venue requirement is jurisdictional. 28 USC 1958 Edition §1391. A consideration of 28 USC 1958 Edition §1404 (a) does not suggest a transfer of this case to another district under the circumstances. The case will be dismissed for lack of jurisdiction.

February 17, 1966

s/ Harold Cox
UNITED STATES DISTRICT JUDGE

EXHIBIT "O"

IN THE UNITED STATES DISTRICT COURT OF THE SOUTHERN

DISTRICT OF MISSISSIPPI, SOUTHERN DIVISION

ARLENA L. SMITH, BOBBIE L. McMULLEN and BETTY L. GOLDY	X	PLAINTIFFS
VS.	X	NO. 3018 (S) (C)
GROVER CLEVELAND HARRISON, STUDENT NONVIOLENT COORDINATING COMMITTEE, NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, SOUTHERN CHRISTIAN LEADERSHIP CONFERENCE, COUNCIL OF RACIAL EQUALITY and COUNCIL OF FEDERATED ORGANIZATIONS	X	DEFENDANTS

INTERROGATORIES PROPOUNDED BY COMPLAINANTS TO DEFENDANTS, GROVER CLEVELAND HARRISON, STUDENT NONVIOLENT COORDINATING COMMITTEE, NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, SOUTHERN CHRISTIAN LEADERSHIP CONFERENCE, COUNCIL OF RACIAL EQUALITY AND COUNCIL OF FEDERATED ORGANIZATIONS

Complainants request each of the above named Defendants by its proper officer or agent, to answer under oath, in accordance with Rule 33 of the Federal Rules of Procedure, the following Interrogatories:--

1. By whom was the Defendant Grover Cleveland Harrison employed?

2. What was Harrison's employer's connection, if any, with each of the above named Defendants?

3. Who paid Defendant Harrison for his services?

4. For whom was Defendant Harrison working?

5. Who had authority to control and direct Harrison's services?

6. Who owned the car that was being driven by Defendant Harrison on or about November 19, 1964, when it is said that Robert S. Lambert and Lydia S. Lambert were injured?

7. What was the make, model and motor number of the car driven by Harrison and referred to in the next preceding Interrogatory?

8. From whom and on what date was said car purchased and please file a copy of the Bill of Sale as an exhibit to your answer to this Interrogatory.

9. Who authorized Harrison to drive the car on the day of the occasion of the accident?

10. What was the mission in which he was engaged at the time of the accident and for whom was the said mission being performed? Who was paying or liable for paying the expenses of Grover Cleveland at the time of the accident on November 19, 1964?

11. Did the Defendant Harrison make any report to anyone of the accident and, if so, to whom and if in writing please file a copy of said report as an exhibit to your answer to this Interrogatory and if oral please state what was stated in the oral report of the accident.

12. Out of whose funds was Harrison's fine paid in the Circuit Court of Stone County, Mississippi, in Causes No. 694 and 695 on the Criminal Docket of that Court, and by what person was the fine paid?

13. If you say that the said fines were paid out of the funds of one of the Defendants herein, then please name said Defendant.

14. Through what person were said fines paid, giving the name of such person and his or her post office address.

15. What project in Mississippi was the Defendant Grover Cleveland Harrison employed in ?

16. Will each Defendant please state whether or not it contributed to the expenses of this project in which Grover Cleveland Harrison was employed at the time of the accident on or about November 19, 1964?

17. Please state whether the operation in which Defendant Harrison was engaged on or about November 19, 1964, was a Council of Federated Organizations project?

18. Will each Defendant please state whether or not its organization was federated into the Cofo Organization and contributed to the project, financially or otherwise, in which Defendant Harrison was engaged on or about November 1964, when it is said Mr. & Mrs. Lambert were injured.

19. In what Council of Federated Organizations' District was the Defendant Harrison employed on the 19th day of November 1964?

20. Where was Defendant Harrison's home base, assigned to him and out of which he was working, on November 19, 1964?

21. Will each Defendant explain just what the Council of Federated Organizations was in Mississippi in 1964, what its pupose was, how it was supported in its Mississippi projects in 1964, and particularly how and by what persons, corporations or

associations it was supported in its project in which Defendant Harrison was engaged during any part of November, 1964?

21. Who is the Mississippi President of Student Nonviolent Coordinating Committee at this time and who was its Mississippi President on November 19, 1964, and give his post office address or addresses.

22. Who is the Mississippi President of National Association for the Advancement of Colored People and who was its Mississippi President on November 19, 1964, and give his post office address or addresses.

23. Who is the Mississippi President of Southern Christian Leadership Conference and who was its Mississippi President on November 19, 1964, and give his post office address or addresses.

24. Who is the Mississippi President of Council of Racial Equality and who was its Mississippi President on November 19, 1964, and give his post office address or addresses.

25. Will each Defendant please state whether its organization was participating, financially or otherwise, in Mississippi as a part of the Council of Federated Organizations in November, 1964.

26. Please state whether or not the Council of Federated Organization has itself ever solicited funds from the public for its operations.

27. Will each Defendant please state fully and in particular the manner, form, extent and method of its participation

in the programs carried out or performed in Mississippi in 1964.

Respectfully submitted,

BARNETT, MONTGOMERY, McCLINTOCK
& CUNNINGHAM

BY: M. B. Montgomery
M. B. MONTGOMERY

SOLICITORS FOR COMPLAINANTS

CERTIFICATE OF SERVICE

I, M. B. Montgomery, of Counsel for Complainants, do hereby certify that I have this day mailed by first class mail, postage prepaid, to Jack H. Young and Carsie Hall, 115½ Farish Street, Jackson, Mississippi, and Howard Moore, Jr., 859½ Hunter Street N.W., Atlanta, Georgia, 30314, Attorneys for Grover Cleveland Harrison, Defendant; to Howard Moore, Jr., 859½ Hunter Street, N.W., Atlanta, Georgia, and Jack H, Young and Carsie Hall, 115½ Farish Street, Jackson, Mississippi, Attorneys for Student Nonviolent Coordinating Committee; to Robert L. Carter and Barbara A. Morris, 20 W. 40th Street, New York, New York 10018, and Jack Young and Carise Hall, 115½ Farish Street, Jackson, Mississippi, Attorneys for National Association for the Advancement of Colored People; to Jack H. Young and Carsie Hall, 115½ Farish Street, Jackson, Mississippi, Attorneys for Southern Christian Leadership Conference; to R. Jess Brown, 125 North Farish Street, Jackson, Mississippi, Alvin

Brunstein, 603 North Farish Street, Jackson, Mississippi, Carl Rachlin, 38 Park Row, New York, New York, Attorneys for Council of Racial Equality; and to Benjamin E. Smith, c/o Smith, Waltzer, Jones & Peebles, 1006 Baronne Building, New Orleans, Louisiana, and Leonard H. Rosenthal, 406 Medical Building, Jackson, Mississippi, Attorneys for Council of Federated Organizations, all Defendants, each a copy of the foregoing Interrogatories pursuant to Rule 33 and Rule 43 (b), to be answered within the time and in the manner required by said Rules.

This the 25 day of February, 1966.

M. B. Montgomery

M. B. MONTGOMERY

OF COUNSEL FOR COMPLAINANTS
315-321 Barnett Bldg.,
P. O. Box 1288
Jackson, Miss.

IN THE
UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

ARLENA L. SMITH, BOBBIE L. McCULLEN, and BETTY GOLDY, Plaintiffs,	
-vs-	NO. 3018(a)(C)
GROVER CLEVELAND HARRISON, et al., Defendants.	

INTERROGATORIES PROPOUNDED BY DEFENDANT GROVER CLEVELAND HARRISON TO BE ANSWERED BY EACH OF THE PLAINTIFFS IN THE ABOVE CIVIL ACTION

Defendant, GROVER CLEVELAND HARRISON, requests that each of the above-named plaintiffs answer under oath, in accordance with Rule 33 of the Federal Rules of Civil Procedure, the following interrogatories:

1. State the name, address and telephone number of all witnesses whom you have ascertained from your investigation have any knowledge of the occurrence on November 19, 1964, which is the basis of your claim in the above-styled matter.

2. What are the names, addresses, home telephone numbers, places of employment, job titles or capacities, and present whereabouts of all witnesses known to the plaintiff?

3. What are the names, addresses, home telephone numbers, places of employment, job titles or capacities, and

present whereabouts of persons who investigated the casualty complained of in this case on behalf of the plaintiff?

4. State whether or not a survey or sketch has been made of the scene of the occurrence by any person of your knowledge. If so, state the name or names of the person or persons who made the survey of the scene of the occurrence.

5. If your answer to the interrogatory concerning the making of a survey is in the affirmative, state the name of the person or persons in whose possession copies of the drawing of plat of the scene of the occurrence are located.

6. State whether or not you have obtained any photographs of the scene of the occurrence described in your petition.

7. If your answer to Interrogatory No. 6 is in the affirmative, state the name, address, and telephone number of the person or persons who took said photographs and the name, address and telephone number of any person or persons who were present at the time said photographs were taken.

8. If your answer to Interrogatory No. 6 as to the taking of the photographs was in the affirmative, state the name, address, and telephone number of every person or persons who have had possession of said photographs at any time subsequent to their taking or the possession of the negatives of said photographs, indicating the name of each person, the date and place where he had possession of said negatives or photographs, as to which of said articles he had in his possession and the length of time possession was in such person.

9. As a result of the casualty complained of in this action, were any photographs, charts, plates, drawings, etc., made of any person or persons, place or places, thing or things, by or on behalf of the plaintiff or otherwise known to have been made? If so:

(a) How many pictures were taken or documents

prepared, on what dates were they taken and/or prepared, and what view, scenes or objects do they depict?

(b) What is the name, address and telephone number, job title and present whereabouts of the person who has custody and/or control thereof?

10. Were any statements, written or otherwise, obtained from anyone, including defendants and/or plaintiff and other parties to this action, interviewed or questioned by or on behalf of the plaintiff in connection with the casualty complained of in this case? If so:

(a) List the names, addresses, home telephone numbers, places of employment, job titles or capacities, and present whereabouts of all persons giving such statements, dates on which they were obtained, and the name, address, job title or capacity and present whereabouts of all persons who have present custody and/or control thereof.

(b) Attach copies of such statements to your answer to this interrogatory.

11. State whether or not either Robert S. Lambert or Lydia Lambert, your parents, has ever been turned down for life insurance or accident insurance or hospital insurance or medical insurance because of physical disability or other cause. If your answer is in the affirmative, give reason, and the date, name and address of the insurance company involved.

12. State whether either Robert S. Lambert or Lydia Lambert have ever been involved in any other automobile collision where either of them was a passenger or driver of

one of the vehicles. If your answer is in the affirmative, state the date of such occurrence, the place of such occurrence, and a brief summary of what took place and the name, address and telephone number of the party or parties involved in the other vehicle.

13. State whether or not either of them had been either an in-patient or an out-patient in any hospital, sanitarium, clinic, or rest home at any time since said occurrence, and if so, give the name and address of each such institution or place, the telephone number of such place and under whose care and for what condition they were visited or an inmate in such place and what treatment they received on each occasion, for each condition, and an itemized list of all charges for such treatment and care.

14. List the names and addresses of all your deceased parents' employers for the past forty-five years, together with the dates of such employment, the nature of the duties performed for each such employment, and the reasons for the termination of each employment:

(a) What time did either of them commence work and when did they complete work the day of the collision, and the day before the collision occurred?

15. Outline in complete detail their official work schedule (inside as well as outside the home), physical and other activities (including social) for the 72-hour period immediately preceding the happening of the casualty herein complained of.

16. Did either Robert Lambert or Lydia Lambert consume

any alcoholic beverage of any type during the 24-hour period immediately preceding the occurrence of the collision: If so:

(a) Specify the nature and the amount of such alcoholic beverages, the time over which consumed, and place at which consumed, and give the name and address of all persons with whom either of them was drinking.

17. Did either of your parents consume any sedatives, tranquilizers, or other drugs and medicines during the 72-hour period immediately preceding the happening of the collision herein complained of: If so:

(a) Identify the nature and type of such medication and the amount and time over which consumed.

18. If Robert Lambert was or had been suffering from any physical or other disability, whether or not it would affect the operation of a motor vehicle, specify the nature, extent, and duration of such disability, and outline all treatments received therefor, together with the date thereof.

19. Has Robert Lambert been involved in any previous or subsequent automobile collision? If so:

(a) Give the dates, locations, names, addresses, home telephone numbers, places of employment, job titles or capacities and present whereabouts of persons involved, and nature and extent of injuries and damages.

20. On the particular trip during the course of which the collision complained of herein occurred, what was their (Mr. and Mrs. Lambert's) point and time of departure, their destination and the purpose of the trip?

21. State how they left the scene of the accident; with

whom and to what destination.

22. By whom was Robert S. Lambert employed prior to the occurrence, at what pay, and how long had he worked there?

23. State whether or not Robert S. Lambert had ever been married previously and divorced or what caused dissolutiono of the marriage, if any. When and where the present marriage took place? How many children? the ages of the children? The names of the children? Where any former spouse or spouses can be located? Where any divorce or divorces was or were granted?

24. Give a complete statement of his medical history naming each illness and by hat physician or physicians Robert S. Lambert and Lydia Lambert were treated and each disability and the name of each physician or physicians who treated them and whether they entered the hospital or were treated in the doctor's office or at home and state which and how long their disability lasted as to each.

25. Had either of them ever had a claim for personal injury against any person, firm, corporation or governmental agency? If so, state the type, the nature of the injury, against whom it was made, how it originated, whether or not either of them made a recovery financially, and to what extent they made a physical recovery and when and where the claim or claims were filed and by whom paid.

26. Had either of them ever had a clain filed against them for personal injury, either prior to or since the occurrence referred to herein? If so, state the status of said claim as to whether or not it is pending or if recovery has been had, etc., how it originated, and by whom said claim or claims were filed.

27. Give the amount of ambulance, medical, hospital and funeral expenses which were incurred as a result of this occurrence. Identify the source of each bill.

28. How much money did Robert S. Lambert or Lydia Lambert contribute each month to the support of each of the plaintiffs?

29. How long has plaintiff Arlena L. Smith lived in the State of Missouri?

30. By whom is each of the plaintiffs named in this action employed? Give complete name and address of each employer.

31. How long have plaintiffs McCullen and Goldy lived in Japan?

32. What is the address of plaintiffs McCullen and Goldy in Japan?

33. Upon the return of plaintiffs McCullen and Goldy to the United States of America, in which state or states will each of them resume or establish residence?

34. Prior to leaving the United States of America, of what state or states were plaintiffs McCullen and Goldy residents? Give the names of the cities and states and the last addressed.

35. Upon what date or dates did plaintiff McCullen and Goldy leave the states identified in answer to Interrogatory No. 34 for Japan?

36. How much does each of the plaintiffs earn each year?

37. What type of work does each of the plaintiffs do?

38. What skills and education does each of the plaintiffs have?

39. How much did each of the plaintiffs contribute

per year to their parents?

40. When and where did any or all of the plaintiffs last live with their parents?

41. When was the last time each of the plaintiffs saw or visited their parents?

42. When is the last time the decedents visited each or all of the plaintiffs?

Howard Moore Jr.

HOWARD MOORE, JR.
859½ HUNTER ST., N. W.
ATLANTA, GEORGIA 30314

EDDIE H. TUCKER
115½ NORTH FARISH STREET
JACKSON, MISSISSIPPI

CERTIFICATE OF SERVICE

I, HOWARD MOORE, JR., of counsel for defendant, GROVER CLEVELAND HARRISON, do hereby certify that I have this day mailed by first class mail, postage prepaid, to M. B. MONTGOMERY, 315-31 Barnett Building, Jackson, Mississippi, of counsel for plaintiffs; Jack H. Young and Carsie Hall, 115½ North Farish Street, Jackson, Mississippi, Attorneys for Student NonViolent Coordinating Committee; to Robert L. Carter and Barbara A. Morris, 20 W. 40th Street, New York, New York, Attorneys for National Association for the Advancement of Colored People; to R. Jess Brown, 125 N. Farish Street, Jackson, Mississippi, Alvin Brunstein, 603 North Farish Street, Jackson, Mississippi, Carl Rachlin, 38 Park Row, New York, New York, Attorneys for Council of Racial Equality; and to Benjamin E. Smith, 1006 Baronne Building, New Orleans, Louisiana, and Leonard H. Rosenthal, 406 Medical Building, Jackson, Mississippi, Attorneys for Council of Federated Organizations, each a copy of the foregoing interrogatories pursuant to Rule 33 and Rule 43(b), to be answered within the time and in the manner required by said rules.

This 2nd day of March, 1966.

Howard Moore Jr

HOWARD MOORE, JR.
OF COUNSEL FOR DEFENDANT

859½ Hunter St., N. W.
Atlanta, Georgia 30314

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DIVISION OF TH E SOUTHERN DISTRICT
OF MISSISSIPPI

ARLENA SMITH, ET AL., PLAINTIFFS

VS. CIVIL ACTION NO. 3018

GROVER CLEVELAND HARRISON, ET AL., DEFENDANTS

NOTICE

TO: Arlena L. Smith,
Bobbie L. McMullen
and Betty L. Goldie
c/o James Armstrong Walters
Attorney at Law
519 North 2nd Avenue
Columbus, Mississippi

(1) ~~Mr.~~ M. B. Montgomery, esq
Attorney at Law
Barnett, Montgomery, McClintock & Cunningham
P. O. Box 1288
Jackson, Mississippi

~~Grover~~ Cleveland Harrison
c/o Jack H. Young, esq
Attorney at Law
115-1/2 North Farish Street
Jackson, Mississippi

and

c/o Howard Moore, Jr. esq
Attorney at Law
859-1/2 Hunter Street, N.W.
Atlanta, Georgia

Sojourner Motor Fleet, Inc.
c/o Jack H. Young
Attorney at Law
115-1/2 North Farish Street
Jackson, Mississippi

and

c/o Howard Moore, Jr.
Attorney at Law
859-1/2 Hunter Street, N.W.
Atlanta, Georgia

National Association for the Advancement
of Colored People
c/o Jack H. Young
Attorney at Law
115-1/2 North Farish Street
Jackson, Mississippi

and

c/o Barbara A. Morris
and Robert L. Carter
Attorneys at Law
20 West 40th Street
New York, New York

Southern Christian Leadership Conference
c/o Jack H. Young
Attorney at Law
115-1/2 North Farish Street
Jackson, Mississippi

Student Non-Violent Co-ordinating
Committee
c/o Jack H. Young
Attorney at Law
115-1/2 North Farish Street
Jackson, Mississippi

and

c/o Howard Moore, Jr.
Attorney at Law
859-12/ Hunter Street, N.W.
Atlanta, Georgia

Congress of Racial Equality
c/o Jess Brown
Attorney at Law
125-1/2 North Farish Street
Jackson, Mississippi

and

c/o Alvin J. Bronstein
Attorney at Law
602 North Farish Street
Jackson, Mississippi

and

c/o Carl Rachlin
Attorney at Law
38 Park Row
New York, New York

Council of Federated Organizations
38 Park Row
New York, New York

and

c/o Benjamin E. Smith
Attorney at Law
1006 Baronne Building
New Orleans, Louisiana

and

c/o Dave Dennis,
Robert Moses,
Bob Weil and
Emily Gordon
1017 Lynch Street
Jackson, Mississippi

Please take notice that the motion of American Liberty Insurance Company to vacate and set aside the judgment of the court of February 16, 1966, dismissing the above styled cause, and praying for other relief, which motion was filed on February 25, 1966, and was noticed for hearing before Hon. William Harold Cox, U. S. District Judge, Biloxi, Mississippi, on March 7, 1966, at 9:00 A.M., in the Court room of the Federal Building, Biloxi, Mississippi, will be brought on before Hon. William Harold Cox, U. S. District Judge, in Jackson, Mississippi, on April 1, 1966, at 9:00 A.M., in the chambers of the said Judge William Harold Cox, or at such other time as may be convenient with the court.

This 10 day of March, 1966.

MORSE AND MORSE
Hatten Building
Gulfport, Mississippi

BY: [signature]

CERTIFICATE

I, George E. Morse, one of counsel for the plaintiff in the above styled cause, hereby certify that a true copy of the foregoing Notice has this day been mailed, postage prepaid, and where the recipients reside more than five hundred miles from Jackson, Mississippi, said notice has been sent by air mail, postage prepaid, to each of the above named individuals at the addresses shown, and a copy thereof has been mailed to U. S. District Clerk at Biloxi, Mississippi, for filing.

This 10 day of March, 1966.

[signature]

IN THE UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

ARLENA L. SMITH, et.al., Plaintiffs, vs. GROVER CLEVELAND HARRISON, et.al., Defendants.	CIVIL ACTION NO. 3018(a)(C)

ANSWERS OF DEFENDANT STUDENT NON-VIOLENT COORDINATING COMMITTEE TO PLAINTIFFS' INTERROGATORIES

Defendant Student Nonviolent Coordinating Committee makes the following answers to plaintiffs' interrogatories, the number of the answer corresponding with the number of the interrogatory as proposed by plaintiffs.

1. Student Nonviolent Coodinating Committee.

2. Associated.

3. Student Nonviolent Coordinating Committee.

4. Defendant Harrison worked for the Student Non-violent Coordinating Committee.

5. Mrs. Ruby Doris Smith or Mrs. S. G. Johnson.

6. Sojourner Motor Fleet, Inc.

7. 1965 Plymouth # R 157-109935.

8. Bill Speros Plymouth-Chrysler, Inc., Memphis, Tennessee; on or about October 24, 1965. This defendant is unable to attach a copy of the Bill of Sale at this time.

9. This defendant did not.

10. Traveling from Hattisburg to Waveland, Mississippi. Defendant Harrison was traveling for this defendant. This defendant was not paying expenses incidental to this trip.

11. Yes. Subsequent to the incident, defendant made a written statement to J. L. McDermott at Gulfport, Mississippi. This defendant is unable to attach a copy of said statement.

12. The fine was paid by Mr. Charles Sykes. At this time, this defendant does not know out of whose funds the fine was paid.

13. See answer to number 12 above.

14. Mr. Charles Sykes, 409 Hewes Building, Gulfport, Mississippi.

15. None.

16. No answer required.

17. No.

18. This defendant was involved with COFO but did not contribute to any COFO project on or about November 19, 1964.

19. None.

20. Atlanta, Georgia.

21. In the summer of 1964, Council of Federated Organizations was a coordinating body. Its purpose was to encourage and aid deprived persons to improve the conditions of their life. COFO was assisted by the efforts of the defendants named in this civil action. Defendant Harrison was not engaged in any COFO project during any part of November, 1964.

21. At this time, this defendant does not have a Mississippi President and did not have such an officer in November, 1964.

22, 23, 24. No answer is required of this defendant.

25. This defendant did associate with Council of Federated Organizations and was financially self-sustaining.

26. No.

27. This defendant supervised and coordinated the efforts of summer volunteers in several designated geographical areas and provided personnel, material, and monetary assistance necessary and incidental to the programs.

STUDENT NONVIOLENT COORDINATING COMMITTEE

BY: _____
MURIEL TILLINGHAS

AFFIDAVIT

State of GEORGIA:

County of FULTON.

Personally appeared, MURIEL TILLINGHAS, before the undersigned officer authorized by law to administer oaths and first being duly sworn, deposes and says that she is Assistant Bookkeeper and keeper of financial and personnel records for the STUDENT NONVIOLENT COORDINATING COMMITTEE, an unincorporated association, of Atlanta, Fulton County, Georgia, one of the defendants in the above-numbered civil action, and that the above and foregoing answers to interrogatories made by her are true and correct.

Subscribed and sworn to before me,
this ____ day of March, 1965

_____
Notary Public.

CERTIFICATE OF SERVICE

I, Howard Moore, Jr., Attorney for Defendant Student Nonviolent Coordinating Committee, do hereby certify that I have this day mailed by first class mail, postage prepaid, to M. B. Montgomery, 315-321 Barnett Bldg., P. O. Box 1288, Jackson, Mississippi; to Robert L. Carter and Barbara A. Morris, 20 W. 40th Street, New York, New York 10018, and Jack Young and Carise Hall, 115½ Farish Street, Jackson, Mississippi, Attorneys for National Association for the Advancement of Colored People; to Jack H. Young and Carise Hall, 115½ Farish Street, Jackson, Mississippi, Attorneys for Southern Christian Leadership Conference; to R. Jess Brown, 125 North Farish Street, Jackson, Mississippi, Alvin Bronstein, 603 North Farish Street, Jackson, Mississippi, Carl Rachlin, 38 Park Row, New York, New York, Attorneys for Congress of Racial Equality; and to Benjamin E. Smith, c/O Smith, Waltzer, Jones & Peebles, 1006 Baronne Building, New Orleans, Louisiana, and Leonard H. Rosenthal, 406 Medical Building, Jackson, Mississippi, Attorneys for Council of Federated Organizations, all Plaintiffs and Defendants, each a copy of the foregoing answers to Plaintiffs interrogatories.

This 21 day of March, 1966.

Howard Moore, Jr.
859½ Hunter Street, N.W.
Atlanta, Georgia 30314

Eddie H. Tucker
115½ North Farish Street
Jackson, Mississippi

Attorneys for Defendant Student
Nonviolent Coordinating Committee

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

ARLENA L. SMITH, et al., Plaintiffs _vs_ GROVER CLEVELAND HARRISON, et al. Defendants.	NO. 3018 (S)(C)

ANSWERS OF DEFENDANT GROVER CLEVELAND HARRISON
TO PLAINTIFFS' INTERROGATORIES

1. Grover Cleveland Harrison; 25; Maintenance and Janitorial Contractor; 2912 Gordon Road, N. W., Apt. 12, Atlanta, Ga.
2. See answer to No. 1 above.
3. About four months.
4. Self-employed.
5. Maintenance and janitorial service.
6. Student Nonviolent Coordinating Committee.
7. Prior to November 19, 1964, about eight months.
8. Field Secretary.
9. About November 17, 1964.
10. My own. None
11. No one. None.
12. No one. None.
13. I was not employed in Mississippi.
14. See answer to 13 above.
15. See answer to 13 above.
16. No one's.
17. See answer to 16 above.
18. See answer to 16 above.
19. On or about November 19, 1964; none, and no one directed me.

20. Previous to November 19, 1964, the Student Nonviolent Coordinating Committee. On or about November 19, 1964; I paid my own expenses.

21. Prior to November 19, 1964, the Student Nonviolent Coordinating Committee. I do not recall who signed it.

22. Choctaw Bank of Butler, Butler, Alabama. William's Tavern, Atlanta, Georgia, Cooper's Gulf Service Station, Atlanta, Georgia.

23. No.

24. I do not know.

25. I do not know.

26. I do not know what organizations, if any, were associated with Council of Federated Organizations on or about November 19, 1964.

27. I do not know.

28. I do not know .

29. I do not know.

30. I do not know whether this statement is true or not. I am not familiar with any organization referred to in this interrogatory as "Nonviolent Coordinating Committee" and "Southern Christian Leadership."

31. I do not know whether this interrogatory states a true fact or not.

32. No.

33. Sojourner Motor Fleet, Inc., owned the car with which the automobile driven by Mr. Robert L Lambert collided.

34. None.

35. None.

36. No one. No civil rights agency.

37. My recollection at this time is that I had had this car since about the last of October, 1964.

38. I did. No credit card.

39. To Wavaland, Mississippi.

40. No one's direction. To visit Wavaland, Mississippi and other places.

41. I was not on a mission.

42. About 30 to 40 miles per hour.

43. South.

44. U. S. Highway 49.

45. In the roadway in which vehicular traffic was moving.

46. I do not remember.

47. No.

48. In the roadway on which vehicular traffic was moving at the time.

49. I do not know.

50. My own capacity and for myself.

51. No.

52. I do not know.

53. Dry and clear.

54. Under construction or repair.

55. Yes.

56. I do not know.

57. Asphalt or concrete.

58. I do not remember.

59. I do not know.

60. I do not know.

61. Involuntary manslaughter; Stone County Jail, Wiggins, Mississippi. Term of years and a fine.

62. I do not know.

63. Mr. Sykes in Gulfport, Mississippi.

This 24th day of March, 1966.

Grover Cleveland Harrison

GROVER CLEVELAND HARRISON

AFFIDAVIT

Personally appeared GROVER CLEVELAND HARRISON before the undersigned officer authorized by law to administer oaths, and first being duly sworn, deposes and says that he is the Grover Cleveland Harrison named in the above and foregoing answers to plaintiffs' interrogatories made by him are true and correct.

Grover Cleveland Harrison (L.S.)
GROVER CLEVELAND HARRISON

Subscribed and sworn to before me,
this 24th day of March, 1966.

Alice M. Lewis
NOTARY PUBLIC

Notary Public, Georgia State at Large
My Commission Expires June 24, 1968

CERTIFICATE OF SERVICE

I, HOWARD MOORE, JR., attorney for defendant Grover Cleveland Harrison, do hereby certify that I have this day mailed by first class mail, postage prepaid to M. B. Montgomery, 315-321 Barnett Bldg., Jackson, Mississippi; to Robert L. Carter and Barbara A. Morris, 20 West 40th Street, New York, New York 10018, and Jack Young and Carsie Hall, 115½ Farish Street Jackson, Mississippi, attorneys for National Association for the Advancement of Colored People; to Jack H. Young and Carsie Hall, 115½ Farish Street, Jackson, Mississippi, attorneys for Southern Christian Leadership Conference; to R. Jess Brown, 125 North Farish Street, Jackson, Mississippi, Alvin Bronstein, 603 North Farish Street, Jackson, Mississippi, Carl Rachlin, 38 Park Row, New York, New York, attorneys for Congress of Racial Equality; and to Benjamin E. Smith, c/o Smith, Waltzer, Jones & Peebles, 1006 Baronne Building, New Orleans, La., and Leonard H. Rosenthal, 406 Medical Building, Jackson, Mississippi, attorneys for Council of Federated Organizations, all plaintiffs and defendants, each a copy of the foregoing answers to phintiffs' interrogatories.

This 24th day of March, 1966.

HOWARD MOORE, JR.
894 Hunter St., N. W.
Atlanta, Georgia 30314

IN THE UNITED STATES DISTRICT COURT FOR THE

SOUTHERN DISTRICT OF MISSISSIPPI

SOUTHERN DIVISION

ARLENA L. SMITH, BOBBIE L.
McCULLEN, and BETTY GOLDY — PLAINTIFFS

VS: — NO. 3018(s)(C)

GROVER CLEVELAND HARRISON, ET AL — DEFENDANTS

N O T I C E

TO: Grover Cleveland Harrison
% Jack H. Young
Attorney at Law
115½ North Farish Street
Jackson, Mississippi

c/o Howard Moore, Jr.
Attorney at Law
859½ Hunter Street, N.W.
Atlanta, Georgia

National Association for the Advancement
of Colored People
% Jack H. Young
Attorney at Law
115½ North Farish Street
Jackson, Mississippi

c/o Barbara A. Morris
and Robert L. Carter
Attorneys at Law
20 West 40th Street
New York, New York

Southern Christian Leadership Conference
% Jack H. Young
Attorney at Law
115½ North Farish Street
Jackson, Mississippi

Student Non-Violent Co-ordinating
Committee
% Jack H. Young
115½ North Farish Street
Jackson, Mississippi

%Howard Moore, Jr.
Attorney at Law
859½ Hunter Street, N. W.
Atlanta, Georgia

Robert L. Carter
Barbara A. Morris
Attorneys at Law
20 West 40th Street
New York, New York 10018

Eddie H. Tucker
115½ North Farish Street
Jackson, Mississippi

Congress of Racial Equality
% Jess Brown
Attorney at Law
125½ North Farish Street
Jackson, Mississippi

% Alvin J. Bronstein
Attorney at Law
602 North Farish Street
Jackson, Mississippi

% Carl Rachlin
Attorney at Law
38 Park Row
New York, New York

Council of Federated Organizations
39 Park Row
New York, New York

% Benjamin E. Smith
Attorney at Law
1006 Baronne Building
New Orleans, Louisiana

% Dave Dennis
Robert Moses
Bob Weil and Emily Grodon
1017 Lynch Street
Jackson, Mississippi

Morse and Morse
Hatten Building
Gulfport, Mississippi

Please take notice that the Motion of Plaintiffs for sixty (60) days additional time within which to file their answers to the interrogatories propounded to them by Grover Cleveland Harrison will be brought on before the Honorable William Harold Cox, United States District Judge, in Jackson, Mississippi, on April 8, 1966, at 9:00 o'clock A. M., in the Chambers of the said Judge, William Harold Cox, or at such

other time as may be convenient with the Court.

BARNETT, MONTGOMERY, McCLINTOCK
& CUNNINGHAM
315 Barnett Building
Jackson, Mississippi

BY: M. B. Montgomery
M. B. Montgomery

OF COUNSEL FOR PLAINTIFFS

I, M. B. Montgomery, one of counsel for the plaintiffs in the above styled cause, hereby certify that a true copy of the foregoing Notice has this day been mailed, postage prepaid, and where the recipients reside more than five hundred miles from Jackson, Mississippi, said notice has been sent by air mail, postage prepaid, to each of the above named individuals at the addresses shown, and a copy thereof has been mailed to U. S. District Clerk at Biloxi, Mississippi, for filing.

This, the 29 day of March, 1966.

M. B. Montgomery
M. B. Montgomery

IN THE UNITED STATES DISTRICT COURT FOR THE

SOUTHERN DISTRICT OF MISSISSIPPI

SOUTHERN DIVISION

ARLENA L. SMITH, BOBBILE L.
McCULLEN, and BETTY GOLDY PLAINTIFFS

VS: NO. 3018(s) (C)

GROVER CLEVELAND HARRISON, ET AL DEFENDANTS

AFFIDAVIT IN SUPPORT OF
MOTION FOR ADDITIONAL
TIME WITHIN WHICH TO
ANSWER INTERROGATORIES
PROPOUNDED TO PLAINTIFFS
BY GROVER CLEVELAND HARRISON

This day personally appeared before me the undersigned authority in and for said County and State, the within named M. B. MONTGOMERY, of Counsel for the Plaintiffs in said cause who being by me first duly sworn deposes and says that the Plaintiff, Arlena L. Smith, is a citizen and resident of 803 Lynn Haven Lane, Hazelwood, Missouri; that the Plaintiff, Bobbie L. McCullen, is one and the same person as Mrs. John L. McCullen and that she is a resident of Nagoya, Japan, and that her post office and street address is 7-10 Daiko Cho, Higashi JU, Nagoya, Japan, and that Plaintiff Betty Goldy, is one and the same person as Mrs. T. J. Goldy a resident of Torrence, California, whose post office and street address is 2150 Edar Place, Torrence, California, and by reason of the location where each of parties plaintiff is presently located it has been impossible to file the answers

to the interrogatories propounded to said plaintiffs by said Grover Cleveland Harrison, Defendant, and it is necessary that said interrogatories be passed through the mail to obtain the signatures and the oath of each of the above named plaintiffs to said answers and for this reason sixty (60) days additional time is in the judgment of affiant necessary for the procurement of the signatures and oaths of each of the parties plaintiff to the answers to the said interrogatories.

M. B. Montgomery

M. B. Montgomery

SWORN TO AND SUBSCRIBED before me this, the 29th day of March, 1966.

Velma G. Howell

Notary Public

My Commission Expires:

My Commission Expires Oct. 18, 1967

IN THE UNITED STATES DISTRICT COURT FOR THE

SOUTHERN DISTRICT OF MISSISSIPPI

SOUTHERN DIVISION

ARLENA L. SMITH, BOBBIE L. McCULLEN, and BETTY GOLDY	PLAINTIFFS
VS:	NO. 3018 (S) (C)
GROVER CLEVELAND HARRISION, ET AL	DEFENDANTS

AFFIDAVIT IN SUPPORT OF MOTION FOR ADDITIONAL TIME WITHIN WHICH TO ANSWER INTERROGATORIES PROPOUNDED TO PLAINTIFFS BY GROVER CLEVELAND HARRISION

This day personally appeared before me the undersigned authority in and for said County and State, the within named M. B. MONTGOMERY, of Counsel for the Plaintiffs in said cause, who being by me first duly sworn deposes and says that the Plaintiff, Arlena L. Smith, is a citizen and resident of 803 Lynn Haven Lane, Hazelwood, Missouri; that the Plaintiff, Bobbie L. McCullen, is one and the same person as Mrs. John L. McCullen and that she is a resident of Nagoya, Japan, and that her post office and street address is 7-10 Daiko Cho, Higashi JU, Nagoya, Japan, and that Plaintiff Betty Goldy, is one and the same person as Mrs. T. J. Goldy, a resident of Torrence, California, and by reason of the location where each of parties is presently located it has been impossible to file the answers

to the interrogatories propounded to said plaintiffs by said Grover Cleveland Harrison, Defendant, and it is necessary that said interrogatories be passed through the mail to obtain the signatures and the oath of each of the above named plaintiffs to said answers and for this reason sixty (60) days additional time is in the judgment of affiant necessary for the procurement of the signatures and oaths of each of the parties plaintiff to the answers to the said interrogatories.

M. B. Montgomery
M. B. MONTGOMERY

SWORN TO AND SUBSCRIBED before me this, the 11 day of April, 1966.

Velma G. Howell
NOTARY PUBLIC

My Commission Expires:

My Commission Expires Oct. 18, 1967

IN THE UNITED STATES DISTRICT COURT FOR THE

SOUTHERN DISTRICT OF MISSISSIPPI

SOUTHERN DIVISION

ARLENA L. SMITH, BOBBIE L. McCULLEN, and BETTY GOLDY	PLAINTIFFS
VS:	NO. 3018 (S) (C)
GROVER CLEVELAND HARRISON, ET AL	DEFENDANTS

N O T I C E

TO: Grover Cleveland Harrison
% Jack H. Young
Attorney at Law
115½ North Farish Street
Jackson, Mississippi

c/o Howard Moore, Jr.
Attorney at Law
859½ Hunter Street, N.W.
Atlanta, Georgia

National Association for the Advancement
of Colored People
% Jack H. Young
Attorney at Law
115½ North Farish Street
Jackson, Mississippi

c/o Barbara A. Morris
and Robert L. Carter
Attorneys at Law
20 West 40th Street
New York, New York

Southern Christian Leadership Conference
% Jack H. Young
Attorney at Law
115½ North Farish Street
Jackson, Mississippi

Student Non-Violent Co-ordinating
Committee
% Jack H. Young
115½ North Farish Street
Jackson, Mississippi

% Howard Moore, Jr.
Attorney at Law
859½ Hunter Street, N. W.
Atlanta, Georgia

Eddie H. Tucker
115½ North Farish Street
Jackson, Mississippi

Congress of Racial Equality
% Jess Brown
Attorney at Law
125½ North Farish Street
Jackson, Mississippi

% Alvin J. Bronstein
Attorney at Law
602 North Farish Street
Jackson, Mississippi

% Carl Rachlin
Attorney at Law
38 Park Row
New York, New York

% Benjamin E. Smith
Attorney at Law
1006 Baronne Building
New Orleans, Louisiana

% Dave Dennis
Robert Moses
Bob Weil and Emily Grodon
1017 Lynch Street
Jackson, Mississippi

Morse and Morse
Hatten Building
Gulfport, Mississippi

Robert L. Carter
Barbara A. Morris
Attorneys at Law
20 West 40th Street
New York, New York 10010

Please take notice that the Motion of Plaintiffs for Sixty (60) days additional time within which to file their answers to the interrogatories propounded to them by Grover Cleveland Harrison and which was noticed for hearing before Honorable William Harold Cox, United States District Judge, Biloxi, Mississippi, on April 8, 1966, at 9:00 o'clock a.m., in his Chamber at the Federal Building at Jackson, Mississippi, will be brought on before Honorable William Harold Cox, United States District Judge, in Jackson, Mississippi, on April 15, 1966, at 9:00 o'clock a.m., in the Chambers of the said Judge, William Harold Cox, or at such other time as may be convenient with the Court.

BARNETT, MONTGOMERY, McCLINTOCK
& CUNNINGHAM
315 Barnett Building
Jackson, Mississippi

BY: M. B. Montgomery
M. B. MONTGOMERY

OF COUNSEL FOR PLAINTIFFS

I, M. B. Montgomery, one of counsel for the plaintiffs in the above styled cause, hereby certify that a true copy of the foregoing Notice has this day been mailed, postage prepaid, and where the recipients reside more than five hundred miles from Jackson, Mississippi, said notice has been sent by air mail,

postage prepaid, to each of the above named individuals at the addresses shown, and a copy thereof has been mailed to U. S. District Clerk at Biloxi, Mississippi, for filing.

This, the 11 day of April, 1966.

M. B. Montgomery

M. B. MONTGOMERY

IN THE UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DISTRICT

ARLENA L. SMITH, et al., Plaintiffs, vs. GROVER CLEVELAND HARRISON, et al., Defendants	CIVIL ACTION NO. 3018(a)(C)

NOTICE OF MOTION

TO:

M. B. MONTGOMERY, ESQ.
BARNETT, MONTGOMERY, McCLINTOCK
& CUNNINGHAM
315-21 BARNETT BUILDING
JACKSON, MISSISSIPPI

JACK B. YOCONS, ESQ.
115 1/2 NORTH PARISH STREET
JACKSON, MISSISSIPPI

R. JESS BROWN, ESQ.
125 NORTH PARISH STREET
JACKSON, MISSISSIPPI

ROBERT L. CARTER, ESQ.
20 WEST 40th STREET
NEW YORK, NEW YORK 10018

ALVIN BRUNSTEIN, ESQ.
601 NORTH PARISH STREET
JACKSON, MISSISSIPPI

CARL RACHLIN, ESQ.
38 PARK ROW
NEW YORK, NEW YORK

BENJAMIN H. SMITH, ESQ.
SMITH, WALTHER, JONES & FREEMAN
1004 BARRONNE BUILDING
NEW ORLEANS, LOUISIANA

LEONARD ROSENTHAL, ESQ.
406 MEDICAL BUILDING
JACKSON, MISSISSIPPI

You are hereby notified that defendants GROVER

CLEVELAND HARRISON and the STUDENT NONVIOLENT COORDINATING COMMITTEE will bring the attached motion on for hearing Monday, October 17, 1966, at 9:00 a.m., in the United States Courtroom, United States Post Office Building, Biloxi, Mississippi, or as soon thereafter as counsel can be heard. You are invited to appear and take such part in these proceedings as you think appropriate.

This 4th day of March, 1966.

Eddie H. Tucker

EDDIE H. TUCKER
115 1/2 North Farish Street
Jackson, Mississippi

HOWARD MOORE, JR.
859 1/2 Hunter Street, N.W.
Atlanta, Georgia 30314

ATTORNEY FOR DEFENDANTS.

IN THE UNITED STATES DISTRICT COURT

FOR THE
SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

ARLENA L. SMITH, et al., Plaintiffs, vs. GROVER CLEVELAND HARRISON, et al., Defendants.	CIVIL ACTION NO. 3018 (c)(S)

Defendants, GROVER CLEVELAND HARRISON and the STUDENT NONVIOLENT COORDINATING COMMITTEE (SNCC) by their attorney, Eddie H. Tucker, renew their previously filed motion and move this Court for an order directing the Clerk of this Court and the Jury Commissioner to bring in a venire free of discrimination or segregation because of race or color. As grounds therefor, defendants show:

1. Defendant, Grover Cleveland Harrison, is a Negro citizen of the State of Alabama. This defendant, at the time of the incident alleged in the complaint, was associated with and involved in the efforts of Negro citizens of the State of Mississippi to acquire equal political and voting rights, equal educational opportunities, equal employment, and equal treatment from the police and courts of the State of Mississippi.

2. Defendant SNCC is popularly considered and known as a civil rights organization. Said defendant is an unincorporated association of students and former students dedicated to the attainment of equal educational, cultural, economic and political rights for underprivileged and culturally deprived people in the United States without regard to their race or color. Since and before November 19, 1964, SNCC has been and

continues to be engaged in and associated with the efforts of the Negro people in the State of Mississippi to obtain equal rights.

3. These defendants are advised that there is now pending in this Court a plenary civil action brought on behalf of several Negro citizens of the State of Mississippi, seeking injunctive relief and money damages against the Clerk and Jury Commissioner on the grounds that they have in the past and continue to systematically and arbitrarily exclude or include qualified Negro citizens on the jury lists of this Court. Said civil action challenges the constitutionality of the organization of jury lists in this Court including the Southern Division on the grounds that a custom, usage, policy and practice has been and continues to be employed which violates Section 243, 18 United States Code, and the Fifth and Seventh Amendments, United States Constitution. The style and number of said case being Samuel Bailey, et al., v. Robert Thomas, Civil Action No. 3674 (J) (c).

4. Members of the Negro race, otherwise qualified to serve as trial or traverse jurors in the United States District Court for the Southern Division, have been and continue to be systematically and arbitrarily excluded or included for jury service in the Southern Division because of their race or color and will continue to be discriminated against on the grounds of their race or color in the organization of the venire from which the jurors will be drawn to try this case in violation of the statutes and constitutional provisions cited above.

WHEREFORE, defendants move this Court for an order directing the Clerk and Jury Commissioner to bring in a venire free of discrimination on the basis of race and color or previous condition of servitude.

Eddie H. Tucker

EDDIE H. TUCKER
115 1/2 North Farish St.
Jackson, Mississippi

HOWARD MOORE, JR.
859 1/2 Hunter Street., N.W.
Atlanta, Georgia 30314

COUNSEL FOR MOVANTS

CERTIFICATE OF SERVICE

I, the undersigned, EDDIE H. TUCKER, one of the attorneys of record for the defendant, do hereby certify that I have this day personally served a copy of the above and foregoing Motion and Notice of Motion on the Honorable M. B. Montgomery, 315-21 Barnett Building, Jackson, Mississippi; the Honorable Jack H. Young 115 1/2 North Farish Street, Jackson, Mississippi; the Honorable R. Jess Brown, 125 North Farish Street, Jackson, Mississippi; the Honorable Leonard Rosenthal, 406 Medical Building, Jackson, Mississippi; and a true copy of the Motion and Notice of Motion was this day sent by United States Mail, postage prepaid to the Honorable Benjamin R. Smith, 1006 Barenne Building, New Orleans, Louisiana, and the Honorable Carl Rachlin, 38 Park Row, New York, New York

This 12th day of October, 1966.

S/ Eddie H. Tucker

Eddie H. Tucker
115 1/2 North Farish Street
Jackson, Mississippi 39201

Smith v Harris

IN THE UNITED STATES DISTRICT COURT FOR THE

SOUTHERN DIVISION OF THE

SOUTHERN DISTRICT OF MISSISSIPPI

AMERICAN LIBERTY INSURANCE COMPANY, a corporation,	:	
Plaintiff	:	
v.	:	CIVIL ACTION NO. 3040 (S)(C)
ARLENA L. SMITH, et al.,	:	
Defendants	:	

NOTICE

TO: Arlena L. Smith, Bobbie L. McMullen
and Betty L. Goldie
c/o James Armstrong Walters
Attorney at Law
519 North 2nd Avenue
Columbus, Mississippi

Mr. M. B. Montgomery
Attorney at Law
Barnett, Montgomery, McClintock & Cunningham
P. O. Box 1288
Jackson, Mississippi

Grover Cleveland Harrison
c/o Jack H. Young
Attorney at Law
115-1/2 North Farish Street
Jackson, Mississippi

and

c/o Howard Moore, Jr.
Attorney at Law
859-1/2 Hunter Street, N.W.
Atlanta, Georgia

Sojourner Motor Fleet, Inc.
c/o Jack H. Young
Attorney at Law
115-1/2 North Farish Street
Jackson, Mississippi

and

c/o Howard Moore, Jr.
Attorney at Law
859-1/2 Hunter Street, N.W.
Atlanta, Georgia

National Association for the Advancement
of Colored People
c/o Jack H. Young
Attorney at Law
115-1/2 North Farish Street
Jackson, Mississippi

and

c/o Barbara A. Morris and Robert L. Carter
Attorneys at Law
20 West 40th Street
New York, New York

Southern Christian Leadership Conference
c/o Jack H. Young
Attorney at Law
115-1/2 North Farish Street
Jackson, Mississippi

Student Non-Violent Co-ordinating Committee
c/o Jack H. Young
115-1/2 North Farish Street
Jackson, Mississippi

and

c/o Howard Moore, Jr.
Attorney at Law
859-1/2 Hunter Street, N.W.
Atlanta, Georgia

Congress of Racial Equality
c/o Jess Brown
Attorney at Law
125-1/2 North Farish Street
Jackson, Mississippi

and

c/o Alvin J. Bronstein
Attorney at Law
602 North Farish Street
Jackson, Mississippi

and

c/o Carl Rachlin
Attorney at Law
38 Park Row
New York, New York

Council of Federated Organizations
39 Park Row
New York, New York

and

c/o Benjamin E. Smith
Attorney at Law
1006 Baronne Building
New Orleans, Louisiana

and

c/o Dave Dennis, Robert Moses,
Bob Weil and Emily Grodon
1017 Lynch Street
Jackson, Mississippi

Eddie H. Tucker
Attorney at Law
115-1/2 North Farish Street
Jackson, Mississippi
Attorney for Grover Cleveland Harrison,
Sojourner Motor Fleet, Inc. and Student
Non-Violent Coordinating Committee

Southern Christian Leadership Conference
c/o Melvyn Zarr
Attorney at Law
10 Columbus Circle
New York, New York

Please take notice that the motion of American Liberty Insurance Company to vacate and set aside the judgment of the court of February 17, 1966, dismissing the above styled cause, and praying for other relief, which motion was filed on February 25, 1966, and was first noticed for hearing before Hon. William Harold Cox, U. S. District Judge, Biloxi, Mississippi, on March 7, 1966, at 9:00 A.M., in the Court Room of the Federal Building, Biloxi, Mississippi, will be brought on before said Hon. William Harold Cox, U. S. District Judge, in the Court Room, Post Office Building, Jackson, Mississippi, on November 18, 1966, at 9:00 A.M. or at such other time as may be convenient with the court.

Paul W. Brock

Paul W. Brock

Of Counsel:

HAND, ARENDALL, BEDSOLE, GREAVES & JOHNSTON

CERTIFICATE OF SERVICE

I, Paul W. Brock, one of the attorneys of record for the plaintiff in the above styled cause, hereby certify that a true copy of the foregoing notice has this day been mailed, postage prepaid, to the above named addressees at their respective addresses shown, and a copy thereof has been mailed to U. S. District Clerk at Jackson, Mississippi, for filing.

This 1st day of November, 1966.

Paul W. Brock

Paul W. Brock

IN THE UNITED STATES DISTRICT COURT FOR THE

SOUTHERN DIVISION OF THE

SOUTHERN DISTRICT OF MISSISSIPPI

AMERICAN LIBERTY INSURANCE COMPANY, a corporation,	:	
Plaintiff	:	
v.	:	CIVIL ACTION NO. 3040 (S)(C)
ARLENA L. SMITH, et al.,	:	
Defendants	:	

N O T I C E

TO: Arlena L. Smith, Bobbie L. McMullen
and Betty L. Goldie
c/o James Armstrong Walters
Attorney at Law
519 North 2nd Avenue
Columbus, Mississippi

Mr. M. B. Montgomery
Attorney at Law
Barnett, Montgomery, McClintock & Cunningham
P. O. Box 1288
Jackson, Mississippi

Grover Cleveland Harrison
c/o Jack H. Young
Attorney at Law
115-1/2 North Farish Street
Jackson, Mississippi

and

c/o Howard Moore, Jr.
Attorney at Law
859-1/2 Hunter Street, N.W.
Atlanta, Georgia

Sojourner Motor Fleet, Inc.
c/o Jack H. Young
Attorney at Law
115-1/2 North Farish Street
Jackson, Mississippi

and

c/o Howard Moore, Jr.
Attorney at Law
859-1/2 Hunter Street, N.W.
Atlanta, Georgia

National Association for the Advancement
of Colored People
c/o Jack H. Young
Attorney at Law
115-1/2 North Farish Street
Jackson, Mississippi

and

c/o Barbara A. Morris and Robert L. Carter
Attorneys at Law
20 West 40th Street
New York, New York

Southern Christian Leadership Conference
c/o Jack H. Young
Attorney at Law
115-1/2 North Farish Street
Jackson, Mississippi

Student Non-Violent Co-ordinating Committee
c/o Jack H. Young
115-1/2 North Farish Street
Jackson, Mississippi

and

c/o Howard Moore, Jr.
Attorney at Law
859-1/2 Hunter Street, N.W.
Atlanta, Georgia

Congress of Racial Equality
c/o Jess Brown
Attorney at Law
125-1/2 North Farish Street
Jackson, Mississippi

and

c/o Alvin J. Bronstein
Attorney at Law
602 North Farish Street
Jackson, Mississippi

and

c/o Carl Rachlin
Attorney at Law
38 Park Row
New York, New York

Council of Federated Organizations
39 Park Row
New York, New York

and

c/o Benjamin E. Smith
Attorney at Law
1006 Baronne Building
New Orleans, Louisiana

and

c/o Dave Dennis, Robert Moses,
Bob Weil and Emily Grodon
1017 Lynch Street
Jackson, Mississippi

Eddie H. Tucker
Attorney at Law
115-1/2 North Farish Street
Jackson, Mississippi
Attorney for Grover Cleveland Harrison,
Sojourner Motor Fleet, Inc. and Student
Non-Violent Coordinating Committee

Southern Christian Leadership Conference
c/o Melvyn Zarr
Attorney at Law
10 Columbus Circle
New York, New York

Please take notice that the motion of American Liberty Insurance Company to vacate and set aside the judgment of the court of February 17, 1966, dismissing the above styled cause, and praying for other relief, which motion was filed on February 25, 1966, and was first noticed for hearing before Hon. William Harold Cox, U. S. District Judge, Biloxi, Mississippi, on March 7, 1966, at 9:00 A.M., in the Court Room of the Federal Building, Biloxi, Mississippi, will not be brought on before said Hon. William Harold Cox, U. S. District Judge, in the Court Room, Post Office Building, Jackson, Mississippi, on November 18, 1966, at 9:00 A.M., as was last noticed, but will be brought on for hearing before the said Honorable William Harold Cox, U. S. District Judge, in the Court Room, Post Office Building, Jackson,

Mississippi, on December 16, 1966, at 9:00 A.M., or at such other time as may be convenient with the court.

Paul W. Brock
Paul W. Brock

Of Counsel:

HAND, ARENDALL, BEDSOLE, GREAVES & JOHNSTON

CERTIFICATE OF SERVICE

I, Paul W. Brock, one of the attorneys of record for the plaintiff in the above styled cause, hereby certify that a true copy of the foregoing notice has this day been mailed, postage prepaid, to the above named addressees at their respective addresses shown, and a copy thereof has been mailed to the U. S. District Clerk at Jackson, Mississippi, for filing.

This 15th day of November, 1966.

Paul W. Brock
Paul W. Brock

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DIVISION OF THE SOUTHERN DISTRICT
OF MISSISSIPPI

AMERICAN LIBERTY INSURANCE
COMPANY, a corporation, PLAINTIFF

VS. CIVIL ACTION NO. 3040 (S)(C)

ARLENA L. SMITH, ET AL., DEFENDANTS

NOTICE

TO: Arlena L. Smith,
Bobbie L. McMullen
and Betty L. Goldie
c/o James Armstrong Walters
Attorney at Law
519 North 2nd Avenue
Columbus, Mississippi

Mr. M. B. Montgomery
Attorney at Law
Barnett, Montgomery, McClintock & Cunningham
P. O. Box 1288
Jackson, Mississippi

Grover Cleveland Harrison
c/o Jack H. Young
Attorney at Law
115-1/2 North Farish Street
Jackson, Mississippi

and

c/o Howard Moore, Jr.
Attorney at Law
859-1/2 Hunter Street, N.W.
Atlanta, Georgia

Sojourner Motor Fleet, Inc.
c/o Jack H. Young
Attorney at Law
115-1/2 North Farish Street
Jackson, Mississippi

and

c/o Howard Moore, Jr.
Attorney at Law
859-1/2 Hunter Street, N.W.
Atlanta, Georgia

National Association for the Advancement
of Colored People
c/o Jack H. Young
Attorney at Law
115-1/2 North Farish Street
Jackson, Mississippi

and

c/o Barbara A. Morris
and Robert L. Carter
Attorneys at Law
20 West 40th Street
New York, New York

Southern Christian Leadership Conference
c/o Jack H. Young
Attorney at Law
115-1/2 North Farish Street
Jackson, Mississippi

Student Non-Violent Co-ordinating
Committee
c/o Jack H. Young
115-1/2 North Farish Street
Jackson, Mississippi

and

c/o Howard Moore, Jr.
Attorney at Law
859-1/2 Hunter Street, N.W.
Atlanta, Georgia

Congress of Racial Equality
c/o Jess Brown
Attorney at Law
125-1/2 North Farish Street
Jackson, Mississippi

and

c/o Alvin J. Bronstein
Attorney at Law
602 North Farish Street
Jackson, Mississippi

and

c/o Carl Rachlin
Attorney at Law
38 Park Row
New York, New York

Council of Federated Organizations
39 Park Row
New York, New York

and

c/o Benjamin E. Smith
Attorney at Law
1006 Baronne Building
New Orleans, Louisiana

and

c/o Dave Dennis,
Robert Moses,
Bob Weil and Emily Grodon
1017 Lynch Street
Jackson, Mississippi

Please take notice that the motion of American Liberty Insurance Company to vacate and set aside the judgment of the court of February 16, 1966, dismissing the above styled cause, and praying for other relief, which motion was filed on February 25, 1966, and was noticed for hearing before Hon. William Harold Cox, U. S. District Judge, Biloxi, Mississippi, on March 7, 1966, at 9:00 A.M., in the Court room of the Federal Building, Biloxi, Mississippi, will be brought on before Hon. William Harold Cox, U. S. District Judge, in Jackson, Mississippi, on April 8, 1966, at 9:00 A.M., in the chambers of the said Judge William Harold Cox, or at such other time as may be convenient with the court.

MORSE AND MORSE
Hatten Building
Gulfport, Mississippi
BY: [signature]

CERTIFICATE

I, George E. Morse, one of counsel for the plaintiff in the above styled cause, hereby certify thata true copy of the foregoing Notice has this day been mailed, postage prepaid, and where the recipients reside more than five hundred miles from Jackson, Mississippi, said notice has been sent by air mail, postage prepaid, to each of the above named individuals at the addresses shown, and a copy thereof has been mailed to U. S. District Clerk at Biloxi, Mississippi, for filing.

This 15 day of March, 1966.

[signature]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI SOUTHERN
DIVISION

AMERICAN LIBERTY INSURANCE COMPANY PLAINTIFF

VS. CIVIL ACTION NUMBER 3040

ARLENA L. SMITH, ET AL., DEFENDANTS

MOTIONS

Comes now the plaintiff, American Liberty Insurance Company, and files the following separate and several motions:

I

To vacate and set aside the judgment of the court of February 17, 1966, dismissing the above cause.

II

In the alternative and in furtherance of justice, to transfer said cause to the United States District Court of either the Southern or Northern District Alabama, under the provision of Title 28, Section 1406(a), U.S.C., or to any judidial district in which it could have been brought.

III

In the alternative, to set aside the judgment of the court of February 17, 1966, dismissing said cause, and to permit plaintiff to amend its Bill of Complaint, without prejudice, by striking the Congress of Racial Equality as a defendant and any defendant as to which venue would be improper and which defendant has not waived its right to object to venue.

IV

To amend said judgment of February 17, 1966, dismissing said cause so as to provide that the same shall be without prejudice to the plaintiff as to any of the issues of said cause or as to any issues which could have been litigated in said cause.

V

To set this cause for trial following the court's ruling on these motions, separately.

GROUNDS

Plaintiff assigns the following separate and several grounds in support of each of the foregoing motions, separately and severally:

I

For that said judgment is contrary to law.

II

For that venue is proper in this cause and this court has jurisdiction thereof.

III

For that venue is proper under the provisions of Title 28, Section 1391(c), which is applicable to corporate plaintiffs as well as to corporate defendants. Plaintiff has at all times pertinent hereto been licensed to do business in the State of Mississippi, and has had a statutory agent for the service of process in the State of Mississippi.

IV

For that this cause arises out of the operation of an automobile and, hende, venue is proper under the provisions of Title 28, Section 1391(s), U.S.C.

V

For that there has been a waiver of the right to object to venue by some or all of the defendants herein.

Hand, Arendall, Bedsole, Greaves
and Johnston
First National Bank Bldg.,
Mobile, Alabama

MORSE AND MORSE
Hatten Bldg., Gulfport, Mississippi
Attorneys for Plaintiff

BY _____

Recd 3/10/65

SMITH, WALTZER, JONES & PEEBLES
ATTORNEYS AND COUNSELORS AT LAW
Suite 1006 Baronne Bldg.
305 Baronne Street
525-4361
NEW ORLEANS, LA. 70112

BENJAMIN E. SMITH
BRUCE C. WALTZER
ALVIN B. JONES
JACK PEEBLES

Cable Address: PEPEN
Notary Public

March 9, 1965

Mr. Clarence Jones
General Counsel
Southern Christian Leadership Conference
c/o Lubell & Lubell
165 Broadway
New York City 10006

Mr. Carl Rachlin
General Counsel
Congress of Racial Equality/
38 Park Row
New York 38, New York

Mr. Howard Moore
General Counsel
Student Non-Violent Coordinating Committee
859 1/2 Hunter Street, N. W.
Atlanta, Georgia

Mr. Robert Carter
General Counsel
National Association for the Advancement
of Colored People
20 West 40th Street
New York, New York

Re: Smith, et al v. Harrison et al

Gentlemen:

I am enclosing with this letter a copy of the complaint filed on February 18th against Grover Cleveland Harrison, Student Non-Violent Coordinating Committee, the National Association for

the Advancement of Colored People, the Southern Christian Leadership Conference, the Congress of Racial Equality and the Council of Federated Organizations. As you can see from the pleadings, this complaint filed in the United States District Court for the Southern District of Mississippi seeks damages in the amount of $1,500,000.00 jointly and in solido from the named defendants for the negligence of one Grover Cleveland Harrison, known as Jesse Harrison, who was involved in an automobile collision on November 19, 1964, in Wiggins, Mississippi, Stone County, wherein two persons, Robert S. Lambert and Lydia Lambert were killed.

There were criminal charges brought against this defendant Grover Cleveland Harrison, which were terminated recently in a plea of guilty to two counts of manslaughter resulting in a suspended sentence and a fine of $10,000.00 which was paid by the Student Non-Violent Coordinating Committee. Mr. Harrison is presently serving the time of the suspended sentence and is at liberty in Alabama. The facts of the case relative to liability have been reviewed on various occasions by myself and our corresponding counsel in Gulfport, Mr. Knox Walker, and our conclusions at this point are that liability on the part of Harrison seems fairly well established. However, some new facts which were related to me by Howard Moore this week may, if properly investigated, show otherwise. As we can determine the circumstances of the accident, it appears that Harrison was proceeding north on U. S. highway # 49 and that in the vicinity of Wiggins, according to some accounts, crossed the center line of the highway and struck head on the car occupied by the deceased persons. The man died on Saturday, November 21st and the woman died on the afternoon of the accident, the 19th of November. Both were 63 years of age, and did not furnish support for anyone except themselves, and the man earned about $4,000.00 as a night watchman. This amount includes his social security check and a retirement check from a bus line in Gulf Port. As you may or may not know, the automobile in question which was driven by Jesse Harrison was owned by Sojourner Motor Fleets, Inc., a non-profit corporation, set up in Atlanta, Georgia as a motor vehicle holding company for SNCC. This automobile we believe to be insured under a combination automobile policy issued by the American Liberty Insurance Company on September 21, 1964, which carried limits of liability of 10 and 20 thousand dollars. There is some question of coverage since the accident occurred in the evening or afternoon of November 19th and the car in question was not insured under the policy until the morning hours of the 19th of November.

While an insurance company adjuster has been working on the case, there has been no acceptance of liability by the insurer, and there have been reports that the insurance company has had difficulties in obtaining local representation. We would hope that Knox Walker will be able to be appointed by the insurance company as its local representative in order that we might all work through him.

It is possible that the service on all parties which we understand was made through the Secretary of State would not be good service, but our local Mississippi counsel assures us that it is good service and since our delay for answer expires on the 10th of March I have undertaken to obtain a delay and/or an extension of time, a copy of this motion I am enclosing herewith. I have discussed this with the plaintiffs' lawyer and he agrees to the delay and I feel sure that Judge Mize will grant our request.

Certainly we should try to have Knox Walker appointed the attorney for the insurance company if they will accept coverage and furnish us a defense, and we should all get together soon as possible to discuss defense and/or settlement of this matter. Certainly our strongest defense would be the question of agency. Your prompt advice relative to this matter would be most appreciated and I remain with best wishes,

Sincerely,

Benjamin E. Smith

BES/mh

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

NO. 3018 (S)(C)

ARLENA L. SMITH, BOBBYE
L. McMULLEN AND BETTY
L. COLDY.....PLAINTIFFS

VS.

GROVER CLEVELAND MORRISON, STUDENT
NONVIOLENT COORDINATING COMMITTEE,
NATIONAL ASSOCIATION FOR THE
ADVANCEMENT OF COLORED PEIPLE,
SOUTHERN CHRISTIAN LEADERSHIP
CONFERENCE, COUNCIL OF RACIAL
EQUALITY AND COUNCIL OF FEDERATED
ORGANIZATIONS.....DEFENDANTS.

MOTION FOR EXTENSION OF TIME
IN WHICH TO PLEAD

Now into Court through undersigned counsel come all of the defendants named herein and appearing solely for the purposes of this Motion and for no other reason and expressly reserving their rights to urge any and all special and general defenses including the defense relating to the jurisdiction of this Court.

Appearers respectfully move the Court for an extension of time in which to plead or otherwise answer for the reason that thiscase was filed on February 18, 1965 and defendants time for answering would expire twenty days from service of this complaint; defendants are informed that service has been made under Mississippi law on the Honorable Herbert Ladner, Secretary of State for the State of Mississippi but none of the defendants have been informed by the Honorable Herbert Ladner thus far of the pendency of this action.

Further, movers would show that this is a complicated and important piece of litigation and would require much thought

and preparation for reply and that to protect their rights they desire and move this court for an extension of thirty days in which to file responsive pleadings up to and including April 10, 1965.

WHEREFORE, Movers pray that this extension of time be granted and that they be allowed until April 10, 1965 to answer this proceeding.

SMITH, WALTZER, JONES & PEEBLES

By _____

Benjamin E. Smith
1006 Baronne Building
New Orleans, Louisiana
-Attorneys for Defendants-

P. O. BOX 2508
1401 SOUTH 20TH STREET
BIRMINGHAM, ALABAMA 35201

MAR 1 8 1965

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

March 16, 1965

Council (Congress) of Racial Equality, Inc.
38 Park Row
New York 38, N. Y. Attn: Mr. Carl Rachlin, General Counsel

Gentlemen:

Re: AB 67991
Robert Lambert, et al. v.
Sojourner Motor Fleet, Inc., et al.
Policy DM 672444
D/A: 11-19-64

Suit was filed on February 16, 1965 in the United States District Court for the Southern District of Mississippi, Southern Division, by Arlena L. Smith, Bobbie L. McMullen and Betty L. Goldy against Grover Cleveland Harrison, Student Nonviolent Coordinating Committee, National Association for the Advancement of Colored People, Southern Christian Leadership Conference, Council of Racial Equality and Council of Federated Organizations arising out of an automobile accident that occurred on November 19, 1964 near Wiggins, Mississippi.

American Liberty Insurance Company issued Policy DM 672444 to Sojourner Motor Fleet, Inc. of Atlanta, Georgia, for automobile bodily injury and property damage liability coverage from September 21, 1964 to the cancellation date of December 15, 1964, with limits of $10,000 per person, and $20,000 per accident for bodily injury, and $5,000 for property damage liability.

The Clerk of Court advises that Attorney Benjamin E. Smith, 1006 Baronne Building, New Orleans, Louisiana, appeared for all the defendants and filed a motion to obtain an extension of time within which to plead, which motion was granted, extending the time for answer or other pleading to April 10, 1965 and setting the case for trial on April 22, 1965.

Council (Congress) of Racial Equality, Inc.
March 16, 1965
Page 2

Since you may contend that the above policy affords coverage to you, we hereby advise that American Liberty Insurance Company disclaims coverage for the above accident and suit or suits brought thereunder, because the 1965 Plymouth automobile involved in the accident was not included in the coverage afforded by the above policy in accordance with the terms and conditions thereof; that an appearance has been made for all of the defendants by Attorney Benjamin E. Smith without the permission of and without consulting American Liberty Insurance Company in violation of the cooperation clause and other terms of the policy, and all other reasons relating to the terms, provisions, conditions, or exclusions contained in the policy or attached endorsements.

Since American Liberty Insurance Company will afford no coverage and will not defend the above suit, we attach a copy of the complaint so that you may take whatever action you feel necessary and proper.

Very truly yours,

AMERICAN LIBERTY INSURANCE COMPANY

Norman A. Williams

Norman A. Williams
Claim Manager

jb

Sojourner Motor Fleet, Inc., 8-1/4 Raymond Street, N. W., Atlanta, Georgia
Mr. Benjamin E. Smith, Attorney at Law, 1006 Baronne Building, New Orleans, La.
Mr. Paul Brock, Attorney at Law, First National Bank Building, Mobile, Alabama
Casualty Underwriters, Inc., Decatur, Georgia
Mr. I. J. Parkerson, Atlanta Claims
Mr. Dudley L. Moore, Sr., Atlanta, Georgia

3/23

March 19, 1965

Hon. Paul O'Dwyer
50 Broad Street
New York, N.Y. 10004

Dear Paul,

Enclosed are the papers I spoke to Judy about earlier yesterday.

May I talk to you about this after you have looked this over? It is a dreadful matter.

Cordially,

Carl Rachlin
General Counsel

CR:hdl

CR phoned him

Lawyers Constitutional Defense Committee, Inc.

Ninth Floor, 156 Fifth Avenue, New York, N. Y. 10010

(212) YU 9-7530

File in Smith v. Harrison

President

LEO PFEFFER
Special Counsel
American Jewish Congress

Vice-Presidents

JOHN M. PRATT
Counsel, Commission on Religion and Race
National Council of the Churches of Christ

CARL RACHLIN
General Counsel
Congress of Racial Equality

Secretary

MELVIN L. WULF
Legal Director
American Civil Liberties Union

Treasurer

EDWIN J. LUKAS
National Affairs Director
American Jewish Committee

ROBERT L. CARTER
General Counsel
National Association for the Advancement of Colored People

The Rev. ROBERT F. DRINAN, S.J.
Dean
Boston College Law School

JACK GREENBERG
Director-Counsel
NAACP Legal Defense and Educational Fund

CLARENCE B. JONES
Counsel to the Rev. Dr. Martin Luther King, Jr.

HOWARD MOORE, JR.
Counsel
Student Non-violent Coordinating Committee

Executive Secretary

HENRY SCHWARZSCHILD

Staff Counsel

Reply To: ALVIN J. BRONSTEIN
603 North Farish Street
Jackson, Mississippi 39202
(601) 948-4191

APR 3 1965

April 2, 1965

Carl Rachlin, Esq.
CORE
38 Park Row
New York 38, New York

Re: Smith v. Harrison et al

Dear Carl:

Confirming the telephone conversation we had today I am enclosing herewith a copy of the summons and complaints in the above action. This was brought to me today by Emily Gordon, a COFO staff worker, who was served today with three copies of same by the U. S. Marshall who stated that he was serving them on COFO, CORE and SNCC. She advised the Marshall that the only organization she had any connection with was COFO and that she was not authorized to accept service for any of the organizations.

I understand that Robert Carter has already received a copy of the complaint which was served on the NAACP and by copy of this letter I am forwarding the other complaints to Ben Smith's office and to Howard Moore.

If there is anything further I can do for you on this matter, please advise.

Best regards,

Alvin J. Bronstein

AJB:mk

cc: Smith, Waltzer, Jones and Peoples, Esqs.
Howard Moore, Esq.

LAW OFFICES
YOUNG & HALL
SUITE 207 - 208 - 213 REDMOND BUILDING
115½ N. FARISH STREET
JACKSON, MISSISSIPPI 39201

JACK H. YOUNG
CARSIE A. HALL

PHONES: FL. 2-7484
FL. 4-3135

April 8, 1965

APR 12 1965

Attorney Carl Rachlin
c/o C. O. R. E.
38 Park Row
New York, New York

Re: Arlena Smith, et al
vs
Grover Cleveland Harrison, et al

Dear Carl:

Enclosed you will find a copy of an Answer which I filed in the above styled case.

With kindest personal regards, I am

Yours very truly,

Jack

Jack H. Young

JHY/mok

Enclosure: As stated

LAW OFFICES
HOLLOWELL, WARD, MOORE & ALEXANDER
859½ HUNTER STREET, N. W.
ATLANTA, GEORGIA 30314

DONALD L. HOLLOWELL
HORACE T. WARD
HOWARD MOORE, JR.
WILLIAM H. ALEXANDER

525-6372

Rec'd April 12

April 9, 1965

Jack N. Young, Esquire
Young and Hall
115½ Farrish Street
Jackson, Mississippi

Dear Jack:

Enclosed please find answer of defendants Harrison and SNCC. Please file this with the Clerk immediately upon receipt.

I will arrange your fee with Jim Foreman as soon as I catch up with him.

I shall mail copies of this answer to other counsel for defendants.

With warmest personal regards, I am,

Very truly yours,

Howard

Howard Moore, Jr.

hmjr./jbm

CC: Carl Rachlin, Esquire
James M. Nabritt, III, Esquire
Benjamin E. Smith, Esquire

April 13, 1965

Alvin Bronstein, Esq.
L.C.D.C.
603 N. Farish St.
Jackson, Miss. 39302

Re: Smith v. Harrison, et al.

Dear Al:

I would like your advice on whether to file a Notice of Appearance in the above case. It seems to me we have never been served, but I do not know Mississippi law. If you think we have been served, please use this letter as your authority to take all steps necessary to appear and defend.

If there are any questions, call me.

Kindest personal regards,

Carl Rachlin
General Counsel

CR:hdl

April 19, 1965

AIR MAIL - SPECIAL DELIVERY

Alvin Bronstein, Esq.
603 N. Farish St.
Jackson, Miss. 39202

Re: Smith v. Harrison

Dear Al:

Enclosed are: 1. Complaint served by registered mail entitled American Liberty Insurance Co. v. Smith et al.

This is a complaint for a declaratory judgment declaring that the plaintiff Insurance Company is not liable in its policy in Smith v. Harrison.

2. Motion in American Liberty v. Smith asking the court to stay the basic lawsuit until their need to defend it or not has been declared by the Federal Court.

This motion is set for the 19th of April at 9:00 A.M. before Harold Cox.

Thank you. I gather you will ask Jess to appear, so that the appearances will be Jess, you and I.

Thank you.

Regards,

Carl Rachlin
General Counsel

Encs/
CR:bdl

Lawyers Constitutional Defense Committee, Inc.

Ninth Floor, 156 Fifth Avenue, New York, N. Y. 10010

(212) YU 9-7530

President
LEO PFEFFER
Special Counsel
American Jewish Congress

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Counsel, Commission on Religion and Race
National Council of the Churches of Christ

CARL RACHLIN
General Counsel
Congress of Racial Equality

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National Association for the Advancement of Colored People

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Director-Counsel
NAACP Legal Defense and Educational Fund

CLARENCE B. JONES
Counsel to the Rev. Dr. Martin Luther King, Jr.

HOWARD MOORE, JR.
Counsel
Student Non-violent Coordinating Committee

Executive Secretary
HENRY SCHWARZSCHILD

Reply to:

Staff Counsel
ALVIN J. BRONSTEIN
603 North Farish Street
Jackson, Mississippi 39202
(601) 948-4191

April 22, 1965

No Original rec'd

Carl Rachlin, Esq.
38 Park Row
New York, N. Y.

Re: Smith v. Harrison et al

Dear Carl:

We have this day filed the Answer on behalf of Congress of Racial Equality in the above matter in the District Court and served the attorney for the plaintiffs. A copy of the Answer is enclosed for your file. The papers you sent on April 19 finally arrived today and apparently were sent regular mail because you did not put "Air Mail - Special Delivery" conspicuously on the envelope.

I note that the summons in the declaratory judgment action was served on the Secretary of State on April 14 and presumably this would have to be answered within 20 days after you received service of same. I am enclosing a copy of that summons in case you don't have one and please advise me of the date of service on you and your thoughts on the answer immediately so that we can get right to it.

Sincerely,

Alvin J. Bronstein

AJB:jb
Enclosures

Smith v Harrison

Rachlin

HAND, ARENDALL, BEDSOLE, GREAVES & JOHNSTON
LAWYERS

CHAS. C. HAND
C. B. ARENDALL, JR.
T. MASSEY BEDSOLE
THOMAS G. GREAVES, JR.
WM. BREVARD HAND
VIVIAN G. JOHNSTON, JR.
PAUL W. BROCK
ALEX F. LANKFORD, III
EDMUND R. CANNON, JR.
LYMAN F. HOLLAND, JR.
J. THOMAS HINES, JR.
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HAROLD D. PARKMAN
G. PORTER BROCK, JR.
HARWELL E. COALE, JR.
STEPHEN G. CRAWFORD
JERRY A. McDOWELL

FIRST NATIONAL BANK BUILDING
MOBILE, ALABAMA
36601

MAILING ADDRESS:
P. O. BOX 123

CABLE ADDRESS:
HAB

TELEPHONE:
432-5514
AREA CODE 205

April 22, 1965

Benjamin E. Smith, Esq.
Attorney at Law
1006 Baronne Building
New Orleans, Louisiana

Re: Arlena L. Smith, et al vs.
Grover Cleveland Harrison, et al
No. 3018(S)(C), United States District Court
for the Southern District of Mississippi,
Southern Division

Dear Mr. Smith:

Our firm represents American Liberty Insurance Company, and I recently appeared before Judge Cox in Biloxi in connection with the declaratory judgment action filed by American Liberty against the plaintiffs and defendants in the above case and also against Sojourner, Inc. During the course of the hearing on this motion, it was brought out that no pleading has been filed on behalf of either CORE or COFO, although the time for responsive pleadings to be filed by these organizations expired April 10. I thought that this should be called to your attention. American Liberty, of course, denies any coverage as to any suit or claim arising out of the accident made the basis of the above cause, denies any obligation to defend and denies any other obligation of any sort, and this letter in no way constitutes any change from this position by American Liberty nor any waiver of its rights.

Yours very truly,

ORIGINAL SIGNED
PAUL BROCK

For the Firm

Answer has been filed

PB.rw
cc: Council of Racial Equality
Council of Federated Organizations

April 22, 1965

Alvin Bronstein, Esq.
603 N. Farish Street
Jackson, Mississippi 39202

In re: Smith v. Harrison

Dear Al:

Thanks for going to Bogalusa and the fine thing you did there. Bob Gore gave me a good report of your activities. I will try to arrange to meet you and Collins, Douglas and Elie in New Orleans shortly so as to plan and undertake some strong legal activity.

By the way, your comment to me regarding Smith v. Harrison and not waiting until the last minute has me a little concerned as to whether you are getting our mail because on April 13 we wrote to you authorizing you to appear on our behalf. I say this because of the delay in your receiving our special delivery letter of April 19.

In any event, rest assured we appreciate the problems you have and obviously will give you all the back-up you need on anything. Just ask.

Warm personal regards.

Sincerely,

Carl Rachlin
General Counsel

CR:JG

cc: Collins, Douglas & Elie, Esqs.
Richard Haley
Dr. George Wiley

April 27, 1965

Alvin Bronstein, Esq.
603 North Farish Street
Jackson, Mississippi 39202

In re: American Liberty v. Smith at al

Dear Al:

Enclosed is the proposed answer in the above case. I do not see any counter claims to be filed. Let me know if you think to the contrary.

See you on May 6th.

Regards.

Sincerely,

Carl Rachlin
General Counsel

CR:JC

enclosure

Lawyers Constitutional Defense Committee, Inc.

Ninth Floor, 156 Fifth Avenue, New York, N. Y. 10010

(212) YU 9-7530

MAY 4 1965

President

LEO PFEFFER
Special Counsel
American Jewish Congress

Vice-Presidents

JOHN M. PRATT
Counsel, Commission on Religion and Race
National Council of the Churches of Christ

CARL RACHLIN
General Counsel
Congress of Racial Equality

Secretary

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Counsel to the Rev. Dr. Martin Luther King, Jr.

HOWARD MOORE, JR.
Counsel
Student Non-violent Coordinating Committee

Executive Secretary

HENRY SCHWARZSCHILD

Reply to:

Staff Counsel

ALVIN J. BRONSTEIN
603 North Farish Street
Jackson, Mississippi 39202
(601) 948-4191

May 3, 1965

Carl Rachlin, Esq.
CORE
38 Park Row
New York 38, N. Y.

Re: American Liberty v. Smith et al

Dear Carl:

Enclosed is a copy of the answer we have just filed in the above case.

Sincerely,

Al/jb

Alvin J. Bronstein

AJB:jb
Encl.

May 21, 1965

Alvin Bronstein, Esq.
L.C.D.C.
603 N. Farish St.
Jackson, Mississippi

Dear Al:

Enclosed is the COFO answer in Smith v. Harrison, for your records.

We have talked on the phone so much recently that there isn't much to say at this point.

Best regards,

Carl Rachlin
General Counsel

Enc./ CR:hdl

Lawyers Constitutional Defense Committee, Inc.

Ninth Floor, 156 Fifth Avenue, New York, N. Y. 10010

(212) YU 9-7530

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HOWARD MOORE, JR.
Counsel
Student Non-violent Coordinating Committee

Executive Secretary
HENRY SCHWARZSCHILD

MAY 25 1965

Reply to:

Mississippi Field Office
603 North Farish Street
Jackson, Mississippi 39202
(601) 948-4191

ALVIN J. BRONSTEIN
Staff Counsel

May 24, 1965

Carl Rachlin, Esq.
CORE
38 Park Row
New York, N. Y.

Re: Smith v. Harrison et al

Dear Carl:

In connection with the above personal injury action, the following is our thought at this time.

In their complaint, the plaintiffs allege that Harrison was in the employ of CORE at the time of the accident, to wit as our transportation officer. They allege the same thing with respect to the other corporate defendants, but they do not make any derivative allegation in connection with our participation in COFO. In our answer we deny this employment.

If we make a motion for summary judgement, supported by an affidavit of an officer of CORE that Harrison was never employed by us, the plaintiffs would have the burden of proving now the contrary. If they cannot, then all other issues in the complaint become immaterial as to CORE and summary judgment should be granted.

Please let me have your thoughts with respect to the foregoing, and if you concur, advise us by whom the affidavit should be made i.e. Ruth Turner, Secretary?

Sincerely,

Al.

Alvin J. Bronstein

AJB:jb

Dear Al
Your idea as to a motion, I agree, (wcl)

is sound. Gene Wiley, associate
national Director, should sign
He is in charge of administering
the fund. Although he was not
employed at that time, he is
still the best to sign the affi-
davit.

Regards

Cofo

May 25, 1965

Alvin J. Bronstein, Esq.
Lawyers Constitutional Defense Committee, Inc.
603 North Farish Street
Jackson, Mississippi 39202

Dear Al:

Your idea as to a motion, I agree, is sound. George Wiley, Associate National Director, should sign. He is in charge of administering the office and although he was not employed at that time, he is still the best to sign the affidavit.

Regards.

Cordially,

Carl Rachlin
General Counsel

CR:JG

JUN 7 1965

O'DWYER & BERNSTIEN

PAUL O'DWYER
OSCAR BERNSTIEN

LEON HERSHBAUM
W. BERNARD RICHLAND
HOWARD N. MEYER
FRANK DURKAN
JOHN BYRNE
JEANNETTE E. PERRY
ROBERT E. DOWD

WILLIAM O'DWYER
COUNSEL

50 BROAD STREET
NEW YORK 4

TELEPHONE BOWLING GREEN 9-3939

June 3, 1965

Carl Rachlin, Esq.
Congress of Racial Equality
38 Park Row
New York 38, N.Y.

Dear Carl:

One of the questions raised by the second paragraph is the question of agency. Did a responsible officer of COFO authorize the use of the car? The second point you make has to do with the responsibility of CORE in such a loose knit organization. I think a lot will depend upon the law of Mississippi with regard to the responsibility of fragments of the unincorporated society for a tort committed by an agent of the society.

In any event, I do not see how the Hertz people can avoid liability and unless they have an action over against CORE or COFO. If they are joint tortfeasors, I cannot see how they can avoid paying the total amount of the recovery.

As I see it, it is primarily Hertz's baby and I think it should be fought on every level by us until a much later time.

Yours sincerely,

Paul O'Dwyer

PO'D/jk

COPY

June 7, 1965

Alvin J. Bronstein, Esq.
630 North Farish Street
Jackson, Mississippi

Dear Al:

Enclosed is a photocopy of a letter from Paul O'Dwyer which speaks for itself but I cannot be certain how much help it is to you, obviously it is not a sharp legal analysis which is what we really need. One point that O'Dwyer makes which however, does have some merit, is that we do need an examination of the Mississippi cases on what constitutes a joint venture. This may give us some leads as to how to prepare this case for trial if necessary.

As to the other point, O'Dwyer makes I think there is considerable validity to that, in that I agree I do not see how Harts can escape total responsibility for what happened here even though at worst they may conceivably have an action against us as a joint venturer.

Sincerely,

CARL RACHELIN
General Counsel

CR/cs
Enc.

Lawyers Constitutional Defense Committee, Inc.

Ninth Floor, 156 Fifth Avenue, New York, N. Y. 10010

(212) YU 9-7530

President
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Counsel to the Rev. Dr. Martin Luther King, Jr.

HOWARD MOORE, JR.
Counsel
Student Non-violent Coordinating Committee

Executive Secretary
HENRY SCHWARZSCHILD

JUN 15 1965

Reply to:

Mississippi Field Office
603 North Farish Street
Jackson, Mississippi 39202
(601) 948-4191
ALVIN J. BRONSTEIN
Staff Counsel

June 13, 1965

Carl Rachlin, Esq.
CORE
38 Park Row
New York, N. Y.

Re: Smith v. Harrison

Dear Carl:

I am enclosing affidavit to be executed by George Wiley in connection with our Motion for Summary Judgment. Please return same as soon as possible.

Sincerely,

Alvin J. Bronstein

AJB:jb

38

Copy

July 12, 1965

Alvin Bronstein, Esq.
LCDC
603 N. Farish Street
Jackson, Mississippi 39202

Dear Al:

Thank you for sending me a copy of Henry Sawyer's memorandum with regard to Richmond v. Scales.

When I received O'Dwyer's memoranda it was as disappointing to me as it was to you so I asked one of our summer students to begin the preparation of a memorandum of Mississippi rule with regard to joint ventures and he has prepared a memorandum which we have not yet put into final shape. In part it parallels the work Henry Sawyer did, though it does not take up the practical question, obviously, of whether we should or should not make a contribution towards a setlement as suggested by Henry. Our analysis of the law would lead us to the opinion we don't have any serious doubt of our freedom from responsibility herein. This, of course, does not nullify the practical question of whether we should make a contribution in order to make ertain a court and a jury does not issue a major judgmet against us which would cost us a lot of money to appal in order to win.

A you probably know, Clarence Jones and Bob Carter have soken to me about a joint 50-50 contribution with Hertz and frankly I have never liked this becaume clearly, regdless of whether Hertz can or can not get contribution rom any of us, it would be wholly liable to the plaintf. Henry's suggestion of a 3-1 contribution with Hrtz bearing the heavy amount makes sense because

Cont'd....

that is what the people who rented the car expected they would receive at the time of entering into the agreement with Hertz.

Frankly, I do not at this moment know where any money would come from to settle this matter since, as you know, CORE's debt is around $250,000, with no immediate improvement in sight. On the other hand, King's outfit does have money and I guess to a lesser extent the NAACP does also, not that their involvement is any greater legally than ours. It is dreadful to have to make a practical decision in a case based upon one's poverty but at the moment I see no alternative. I would suggest that Henry Sawyer's suggestion of a 3-1 contribution by Hertz be explored. If they seem interested, then I am in a position to push hard in order to get this off our backs.

With best regards,

Sincerely,

CARL RACHLIN
General Counsel

CR/cs

cc: Henry Sawyer

Lawyers Constitutional Defense Committee
Mississippi Field Office
603 North Farish Street, Jackson, Mississippi 39202

(601) 948-4191

ALVIN J. BRONSTEIN
Staff Counsel

July 21, 1965

JUL 23 1965

Carl Rachlin, Esq.
CORE
38 Park Row
New York, New York

Re: Smith v. Harrison

Dear Carl:

The Motion for Summary Judgment in the above case was argued before Judge Cox on July 16. I am enclosing a copy of the brief which we submitted. Judge Cox gave the attorneys for the plaintiffs 30 days in which to submit briefs in opposition to our Motion.

Sincerely yours,

Alvin J. Bronstein

Enclosure

AJB/em

LAW OFFICES
HOLLOWELL, WARD, MOORE & ALEXANDER
859½ HUNTER STREET, N. W.
ATLANTA, GEORGIA 30314

525-8372

DONALD L. HOLLOWELL
HORACE T. WARD
HOWARD MOORE, JR.
WILLIAM H. ALEXANDER

August 14, 1965

The Honorable William Harold Cox
Judge, United States District Court
P. O. Box 2447
Jackson, Mississippi

Re: Nos. 3018 and 3040(S)(G)
Arlena L. Smith, et al v.
Grover Cleveland Harrison, et al
and
American Liberty Insurance Corporation v.
Sojourner Motor Fleet, Inc., et al.

Dear Judge Cox:

This is written in response to the letter of Attorney George E. Norse dated August 10th in which he cogently suggests that the declaratory judgment action be tried before the suit for wrongful death.

Defendant Sojourner Motor Fleet, Inc., on behalf of which I write, thinks that Mr. Norse's suggestion is well taken and, accordingly, has no objections to the declaratory judgment action being heard first, October 13, 1965.

Very truly yours,
s/ Howard Moore, Jr.
Howard Moore, Jr.

hmjr/jhm
cc: George Norse, Esq.
L.H. Rosenthal, Esq.
Paul Brock, Esq.
Benjamin Smith, Esq.
Robert L. Carter, Esq.
James A. Walters, Esq.
Jack H. Young, Esq.
Carl Rachlin, Esq.
Alvin J. Bronstein, Esq.

United States District Court
Southern District of Mississippi
Jackson, Mississippi

William Harold Cox
District Judge

AUG 1 8 1965

August 16, 1965

Mr. Carl Rachlin, Attorney
38 Park Row
New York 38, New York

Dear Mr. Rachlin:

Re: Arlena Lee Smith, et al vs. Grover Cleveland Harrison, et al, Civil Action No. 3018(S)

This case No. 3018(S) and 3040(S), pending at Biloxi, probably will be handled by a disposition of the latter case first. It is my recollection that the lawyer who appeared before me was a professor and will probably be in school when the case is reached, but communications will be handled through Mr. Rosenthal.

I did not notice the manner in which attorneys were addressed by Mr. Morse. I am sure that he meant no discourtesy to anybody.

I am awaiting with interest the disposition of case No. 3040(S) to see the tact taken by the attorneys but I hope that nobody is relying on that procedure as any part of discovery device in this Court.

With kindest regards, I am

Yours very truly,

Harold Cox

AUG 25 1965

JAMES A. WALTERS

ATTORNEY AT LAW

519 2ND AVENUE NORTH

COLUMBUS, MISSISSIPPI

OFFICE PHONE 328-9216

RESIDENCE PHONE 328-8213

August 23, 1965

Hon. Wm. Harold Cox
U. S. District Judge
P. O. Box 2447
Jackson, Mississippi

RE: Arlena L. Smith vs. Grover Cleveland Harrison, et al - No. 3038 (S)(C) and No. 3040 (S)(C)

Dear Judge Cox:

On behalf of the Plaintiffs, Arlena L. Smith, et al, I have no objection to the suit for declaratory judgment brought by American Liberty Insurance Corporation being heard prior to the personal injury damage suit.

Respectfully yours,

James A. Walters

James A. Walters

JAW:jy

COPY

Smith v Hoorsa

United States District Court

Southern District of Mississippi

Jackson, Mississippi

William Harold Cox
District Judge

August 23, 1965

Dear Sirs:

Re: Civil Action No. 3018(S)
Civil Action No. 3040(S)

In view of the circumstances mentioned in letters of counsel in these cases pending in this district at Biloxi, Case Number 3018(S) set for trial on September 21 will be continued; and Case Number 3040(S) set for trial on October 13 will be tried.

With kindest regards to each of you, I am

Yours very truly,

s/ Harold Cox

WHC:afc

cc: James A. Walters, Esquire
L. H. Rosenthal, Esquire
Jack H. Young, Esquire
R. Jess Brown, Esquire
Morse & Morse
Carl Rachlin, Esquire

Lawyers Constitutional Defense Committee
Mississippi Field Office
603 North Farish Street, Jackson, Mississippi 39202
(601) 948-4191

SEP 7 1965

September 3, 1965

ALVIN J. BRONSTEIN
Staff Counsel

Carl Rachlin, Esq.
38 Park Row
New York, New York

Re: Smith v. Harris
0070

Dear Carl:

We are building up quite a number of disbursements in the above case between filing fees, transcripts, depositions, travel expenses, etc. Since CORE is a named defendant, I think it fair that they make some contribution and pay these expenses. Please advise and if you think this is all right, then I will send an itemized bill.

Sincerely,

Alvin J. Bronstein

AJB:mg

38

JAMES A. WALTERS
ATTORNEY AT LAW
519 2ND AVENUE NORTH
COLUMBUS, MISSISSIPPI

OFFICE PHONE
328-9216

RESIDENCE PHONE
328-8213

SEP 8 1965

September 7, 1965

Honorable William Harold Cox
United States District Judge
P. O. Box 2447
Jackson, Mississippi

RE: Arlena L. Smith vs. Grover Cleveland Harrison, et al - No. 3018 (S) (C) and No. 3040 (S) (C)

COPY

Dear Judge Cox:

The first of the above styled cases was set for trial September 21, 1965 and the second was set for October 13, 1965, however, the plaintiffs, American Liberty Insurance Corporation, now wish to change the trial dates again and have filed a motion to that effect.

The plaintiffs in the first of the above styled cases would like to get their case before the Court and further as the attorney for the plaintiffs I have tried to cooperate with the defendants in every way, however, since this case is becoming more confusing with each passing day I humbly object to any motion for continuance filed by the plaintiffs in Case No. 3040 (S) (C). Grover Cleveland Harrison can only tell what happened at the accident not who carried what insurance policy with what company.

It is my honest belief that the defendants in both cases are trying everything possible to avoid responsibility and pass the buck from one to the other.

I humbly ask that this Honorable Court will set the date for trial of Case No. 3018 once and for all so any and all matters pertaining thereto will be fully and finally aired because as attorney for the plaintiffs in Case No. 3018 I would like a date certain to prepare my clients case in full.

Respectfully yours,

James A. Walters

James A. Walters

JAW:jy
cc:Mr. Paul Brock
cc:Mr. L. H. Rosenthal
cc:Smith, Waltzer, Jones & Peebles
cc:Robert L. Carter & Barbara A. Morris
cc:Jack H. Young & Carsie Hall
cc:Howard Moore, Jr.
cc:Carl Rachlin
cc:R. Jess Brown
cc:Alvin J. Bronstein
cc:

September 10, 1965

Hon. William Harold Cox
United States District Judge
P. O. Box 2447
Jackson, Mississippi

RE: Smith v. Harrison

Dear Judge Cox:

I regret the necessity of writing to you once more on what I consider an elementary matter of courtesy between brother attorneys. After your courteous letter to me I had hoped that improper forms of address from one attorney to others would close.

Unhappily, this is not the fact. The letter of Mr. James A. Walters of September 7, 1965, to you repeats this discourtesy. Should Mr. Walters be discourteous to everyone, as much as I might regret it, I would consider it merely a personal aberration. But, this selective discourtesy I neither understand nor appreciate.

May I respectfully request that Mr. Walters be so advised.

As I stated before, Mr. Alvin Bronstein will take whatever steps are appropriate on behalf of

Cont'd...

my client in so far as the letter of Mr. Walters requests any relief.

Thank you for your courtesy in this matter.

Sincerely,

CARL RACHLIN
General Counsel

CR/cs

cc: Paul Brock, Esq.
L. H. Rosenthal, Esq.
Smith, Waltzer, Jones & Peebles, Esqs.
Robert L. Carter & Barbara A. Morris, Esqs.
Jack H. Young & Carsie Hall, Esqs.
Howard Moore, Jr., Esq.
R. Jess Brown, Esq.
Alvin J. Bronstein, Esq.

LAW OFFICES
HOLLOWELL, WARD, MOORE & ALEXANDER
859½ HUNTER STREET, N. W.
ATLANTA, GEORGIA 30314

DONALD L. HOLLOWELL
HORACE T. WARD
HOWARD MOORE, JR.
WILLIAM H. ALEXANDER

525-8372

September 19, 1965

COFC
Suit

The Honorable William Harold Cox
Judge, United States District Court
Post Office Box
Jackson, Mississippi

Re: American Liberty Insurance Co. v.
Arlena L. Smith, et al.
C/A No. 3040 (s)(c)

Dear Judge Cox:

This is written to inquire whether an order has been entered in the above-styled case requiring defendant Grover Cleveland Harrison to present himself for the taking of a deposition.

On September 9th, counsel for the plaintiff sent me a carbon copy of a letter addressed to the Court in which he indicated that such an order was being presented and that copies were being mailed to Miss Wharton. However, to date, I have neither received an unsigned copy of such an order nor one signed by the Court. If an order has been signed, may the Clerk or counsel for the plaintiff be directed to served me with a copy or to advise me of its content by phone or mail?

I shall greatly appreciate the Court's favor with respect to this request and inquiry.

A copy of this letter is being mailed to all counsel in this case.

Very truly yours,

Howard Moore Jr.

Howard Moore, Jr.

LAWYERS CONSTITUTIONAL DEFENSE COMMITTEE
OF
THE AMERICAN CIVIL LIBERTIES UNION
SOUTHERN OFFICE
603 NORTH FARISH STREET, JACKSON, MISSISSIPPI 39202
(601) 948-4191
ALVIN J. BRONSTEIN, STAFF COUNSEL

DEC 6 1965

December 3, 1965

Carl Rachlin, Esq.
CORE
38 Park Row
New York, N. Y.

Re: Smith v. Harrison

Dear Carl:

I renewed the motion for summary judgment on behalf of CORE today and same was granted by Judge Cox. I am enclosing a copy of the order which was this day filed.

I will prepare a bill of costs to be entered in this matter.

The attorneys for the insurance carrier in the companion action, American Liberty v. Smith, will probably stipulate to dismiss their action as to CORE. The only unfortunate thing is that we got this result after we had expended a couple of hundred dollars on depositions, etc. in the companion case which I don't see how we can recover in the captioned case. If you can figure out a way, let me know.

Best regards,

Alvin J. Bronstein

AJB:jb

cc: Henry Schwarzschild

12/3/65

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

CIVIL ACTION NUMBER 3018 (S)(C)

ARLENA L. SMITH, et al — PLAINTIFFS

vs.

GROVER CLEVELAND HARRISON, et al — DEFENDANTS

ORDER

This cause having come on for hearing on a motion for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure in favor of the defendant Congress of Racial Equality, (improperly named in the complaint "Council" of Racial Equality), and a hearing having been held on July 16, 1965 at which time the Plaintiffs were granted an additional thirty days in which to submit a brief or take other action in opposition to the motion, and during which time no action was taken by Plaintiffs, and this motion having been renewed on September 6, 1965, after which the Plaintiffs were given an additional thirty days to take action in opposition to the motion, and no action having been taken by the Plaintiffs, and it appearing to the Court from the pleadings and affidavit filed with the motion that there is no genuine issue concerning the material facts with respect to this defendant, and that this defendant is entitled to summary judgment as a matter of law, it is ordered, adjudged and decreed by the Court:

1. That the defendant, Congress of Racial Equality's motion for summary judgment in its favor pursuant to Rule 56 of the Federal Rules of Civil Procedure, is hereby sustained and granted;

2. That the defendant, Congress of Racial Equality recover of the Plaintiffs, their costs in this action.

ORDERED, ADJUDGED AND DECREED this 3rd day of December, 1965.

/s/ Harold Cox
UNITED STATES DISTRICT JUDGE

BARNETT, MONTGOMERY, McCLINTOCK & CUNNINGHAM
ATTORNEYS AT LAW
SUITE 315-321 BARNETT BUILDING
JACKSON 1, MISSISSIPPI

ROSS R. BARNETT
JUDGE M. B. MONTGOMERY
GEORGE T. McCLINTOCK
E. HUGH CUNNINGHAM, JR.
JAMES ARDEN BARNETT
ROSS R. BARNETT, JR.

P. O. BOX 1288
TELEPHONE FL 2-3871

February 25, 1966

Hon. R. Jess Brown
Attorney at Law
125 North Farish Street
Jackson, Mississippi

Hon. Carl Rachlin
Attorney at Law
38 Park Row
New York, New York

Hon. Alvin Brunstein
Attorney at Law
603 North Farish Street
Jackson, Mississippi

Dear Sirs:

Re: Arlena L. Smith, et al. vs.
Council of Racial Equality

I enclose herewith copy of interrogatories propounded by complainants to defendants in the above styled cause, in accordance with Rule 33, the original of which has been filed as of this date.

Sincerely yours,

BARNETT, MONTGOMERY, McCLINTOCK
& CUNNINGHAM

M. B. Montgomery

M. B. Montgomery

MBM:id

LAWYERS CONSTITUTIONAL DEFENSE COMMITTEE, INC.
603 N. FARISH STREET
JACKSON, MISS.
PH. 601-948-4191

MAR 2 1966

February 27, 1966

M. B. Montgomery, Esq.
315-321 Barnett Building
Jackson 1, Mississippi

Re: Smith v. Harrison
Civil Action No. 3018 (s)(c)

Dear Sir:

This will acknowledge receipt from you of a copy of interrogatories propounded to defendant Council of Racial Equality. On behalf of defendant Congress of Racial Equality (improperly named in the complaint "Council" of Racial Equality) we hereby reject said interrogatories for the following reason:

The Congress of Racial Equality is no longer a party to the captioned action, summary judgment having been entered in its favor on December 3, 1965.

Very truly yours,

AJB

Alvin J. Bronstein

AJB:jb

cc: Clerk, U.S.D.C., Biloxi
cc: Carl Rachlin, Esq.

LAW OFFICES
WARD, MOORE & ALEXANDER
859½ HUNTER STREET, N. W.
ATLANTA, GEORGIA 30314

HORACE T. WARD
HOWARD MOORE, JR.
WILLIAM H. ALEXANDER

PHONE: 525-8372
AREA CODE 404

March 2, 1966

Clerk, United States District Court
for the Southern District of Mississippi
United States Post Office Building
Biloxi, Mississippi

Re: Helena L. Smith, et al
v.
Grover Cleveland Harrison, et al
No. 3018(a)(c)

Dear Sir:

Enclosed for filing please find interrogatories of defendant Grover Cleveland Harrison propounded to the plaintiffs.

Copies of these interrogatories and of this letter are being mailed to each attorney whose name appears on the certificate of service attached to the interrogatories.

Very truly yours,

Howard Moore, Jr.

Howard Moore, Jr.

hmjr/jbm

LAW OFFICES
FINNEY AND GRAY
16½ WEST LIBERTY STREET
SUMTER, S. C. 29151

ERNEST A. FINNEY, JR.
RUBEN L. GRAY

P. O. BOX 636
TELE. 775-1787

August 27, 1966

Scholarship, Education and Defense
Fund for Racial Equality, Inc.
Legal Department
Mr. Carl Rachlin
150 Nassau Street
New York, New York

Re: Thomas A. Thompson, Plaintiff,
-vs-
Sherman Alonzo Henry, Oneeda Dukes, and the Congress of Racial Equality, a Corporation, Defendant.

Dear Carl:

I am enclosing a copy of one of the Complaints which were filed in the above entitled matter. There are two additional Complaints pending. One for the wrongful death of Doris Hannah Thompson seeking $500,000.00, and one for injuries suffered by Thomas Allen Thompson, Jr., seeking $20,000.00. These Complaints are identical to the one enclosed except for allegations concerning injuries and the wrongful death.

I have called the insurance carrier for the Dukes' car, and I am advised that they are defending to the extent of their coverage. I also called the attorney for the plaintiff and received an extension of time to September 15 for some reply or answer on behalf of the Congress of Racial Equality. I specifically informed him that as far as I knew, there would be no service on C. O. R. E.

I would appreciate your immediate advice as to what position to take in regard to this matter.

Yours very truly,

Ernest A. Finney, Jr.

EAF Jr:dmm
Enc.

HAND, ARENDALL, BEDSOLE, GREAVES & JOHNSTON
LAWYERS
FIRST NATIONAL BANK BUILDING
MOBILE, ALABAMA
36601

CHAS. C. HAND
C. B. ARENDALL, JR.
T. MASSEY BEDSOLE
THOMAS G. GREAVES, JR.
WM. BREVARD HAND
VIVIAN G. JOHNSTON, JR.
PAUL W. BROCK
ALEX F. LANKFORD, III
EDMUND R. CANNON
LYMAN F. HOLLAND, JR.
J. THOMAS HINES, JR.
DONALD F. PIERCE
LOUIS E. BRASWELL
HAROLD D. PARKMAN
G. PORTER BROCK, JR.
HARWELL E. COALE, JR.
STEPHEN G. CRAWFORD
JERRY A. McDOWELL
W. RAMSEY McKINNEY, JR.
LARRY U. SIMS
C. WAYNE LOUDERMILCH

MAILING ADDRESS:
P. O. BOX 123

CABLE ADDRESS:
HAB

TELEPHONE:
432-5511
AREA CODE 205

November 15, 1966

Smith
Harrison

Carl Rachlin, Esq.
Attorney at Law
38 Park Row
New York, New York

Re: American Liberty Insurance Company
vs. Arlena L. Smith, et al,
Civil Action No. 3040 (S)(C), in the
United States District Court for the
Southern District of Mississippi

Dear Defendant or Defendant's Attorney:

The motion of American Liberty to vacate and set aside the judgment of the Court of February 17, 1966, was last noticed for November 18, 1966 at 9:00 A.M. in Jackson, Mississippi. I have now been informed that Judge Cox is now engaged in the trial of a lengthy suit and that it is probable that he will hear no motions on Friday, November 18. Accordingly, that notice is withdrawn and I have again noticed the same motion for 9:00 A.M. on Friday, December 16, 1966. A copy of such notice is enclosed.

Yours very truly,

Paul W. Brock

For the Firm

PB.pd
Enc.

File Smith vs Harrison

BARNETT, MONTGOMERY, McCLINTOCK & CUNNINGHAM
ATTORNEYS AT LAW
SUITE 315-321 BARNETT BUILDING
JACKSON 1, MISSISSIPPI

ROSS R. BARNETT
JUDGE M. B. MONTGOMERY
GEORGE T. McCLINTOCK
E. HUGH CUNNINGHAM, JR.
JAMES ARDEN BARNETT
ROSS R. BARNETT, JR.

P. O. BOX 1288
TELEPHONE FL 2-3671

April 14, 1967

Carl Rachlin, Esquire
Attorney at Law
38 Park Row
New York, New York
10038

Re: Arlena L. Smith, et al
vs.
Grover Cleveland Harrison, et al

Dear Sir:

Enclosed please find copy of Notice to Take Deposition, the original of which is being this day filed with the Clerk of the United States District Court for the Southern District of Mississippi, Biloxi Division.

Sincerely yours,

BARNETT, MONTGOMERY, McCLINTOCK
& CUNNINGHAM

M. B. Montgomery

M. B. Montgomery

MBM:id
Encl.

/

Smith
Harrison

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

EDWARD W. WADSWORTH
Clerk

Office of the Clerk
June 15, 1967

Room 408, 400 Royal St.
New Orleans, La. 70130

Mr. Paul W. Broch
Attorney at Law
First National Bank Building
Mobile, Alabama

Re: American Liberty Insurance Company
-vs- Arlena L. Smith, Et Al,

Dear Sir:

Pursuant to Rule 23(a), copy of which is enclosed, you are hereby notified that the record on appeal has been received from the Clerk of the District Court and the Clerk's docketing fee of $25.00 is now due and payable within ten (10) days from your receipt of this letter. Also, within that time you are required either to withdraw the record for reproduction or authorize its release by this office for reproduction by a printer of your own selection.

You have the right to authorize withdrawal of the record from this office by one of the following local printing companies (formerly the Court's contract printers prior to adoption of the enclosed revision of Rule 23(a)) provided you arrange with one of them direct for the required number of printed copies of the record to be filed in this office within the forty (40) day period allowed by the rule:

E. S. Upton Printing Co.
740 Carondelet Street
New Orleans, Louisiana

Scofields' Quality Printers, Inc.
3003 Tulane Avenue
New Orleans, Louisiana

Of course, you also have the right, if you prefer, to use the services of any other reputable printing firm of your selection.

Also, Rule 26 of this Court authorizes records to be reproduced in forms other than standard typographic printing, such as by the mimeographed, offset duplicated, or lithographed method, etc. For your additional information, the A. B. Letter Service, 327 Chartres Street, New Orleans, Louisiana, has heretofore demonstrated its qualifications to reproduce records by offset duplication as permitted by Rule 26.

This matter should be given your prompt attention, since you have the responsibility for selection of a printer who will print your record within the forty (40) day period allowed. The Court's schedule will not permit delays, and the failure promptly to prosecute your appeal by prompt reproduction of your record, etc., may result in the appeal being dismissed for want of prosecution.

In addition, counsel for appellant will also be responsible, under Rule 75 F.R.C.P., to make certain that the original documentary or physical exhibits which may be needed for the appeal have been transmitted to this Court. Inquiries concerning what exhibits, if any, have been transmitted to this Court should be directed to the Clerk of the District Court.

Very truly yours,

EDWARD W. WADSWORTH,
CLERK

By R. E. Windhorst, Jr.
Deputy Clerk

/lgc
cc: Mr. George E. Morse
Mr. James Armstrong Walters
Mr. M. B. Montgomery
Mr. Jack H. Young
Miss Barbara A. Moris and
Mr. Robert L. Carter
Mr. Melvin Zarr
Mr. Howard Moore, Jr.
Mr. Alvin J. Bronstein
Mr. Carl Rachlin
Mr. Benjamin E. Smith
Mr. Eddie H. Tucker
Mr. L. H. Rosenthal
Messrs. Dave Dennis, Robert Moses,
Bob Weil and Miss Emily Grodon

BARNETT, MONTGOMERY, McCLINTOCK & CUNNINGHAM
ATTORNEYS AT LAW
SUITE 315-321 BARNETT BUILDING
JACKSON, MISSISSIPPI
39205

ROSS R. BARNETT
JUDGE M. B. MONTGOMERY
GEORGE T. MCCLINTOCK
E. HUGH CUNNINGHAM, JR.
ROSS R. BARNETT, JR.
P. Z. JONES, JR.

P. O. BOX 1288
TELEPHONE 948-6640

June 23, 1967

Mr. Carl Rachlin
Attorney at Law
38 Park Row
New York, New York

File

Dear Sir:

Re: Arlena L. Smith, et al
vs:
Grover Cleveland Harrison

Owing to the fact that the Senior Member of the firm was engaged as Counsel in the above entitled cause and is presently busily engaged in his campaign for re-election to the office of Governor of the State of Mississippi, it is quite impossible for him to attend the hearing and trial of the above entitled cause that has been set for trial in Biloxi on July 10,1967.

Judge Cox accordingly has entered an order for continuance for the term in this case and accordingly it will not be heard at the time previously set.

Sincerely yours,

M. B. Montgomery

M. B. Montgomery

MBM/vh

United States Court of Appeals
FIFTH CIRCUIT

File

EDWARD W. WADSWORTH
CLERK

OFFICE OF THE CLERK

ROOM 405 - 400 ROYAL ST.
NEW ORLEANS, LA. 70130

June 26, 1967

Smith v Harrison

Mr. Paul W. Brock
Attorney at Law
P. O. Box 123
30th Fl., First Nat'l Bk. Bldg.
Mobile, Ala. 36601

Re: No. 24926 - American Liberty Insurance Co.
versus - Arlena L. Smith, Et Al

Dear Sir:

I am authorized by this court to advise that

your Motion for Injunction and Stay of Proceedings Pending Appeal
was received and filed this 26th day of June ,

19 67 , and under the rules and practice of this Court will be

presented for ruling without oral argument on or about *July 1,

1967 , together with any response or opposition that

may be filed by opposing counsel by that date.

Very truly yours,

Edward W. Wadsworth

EDWARD W. WADSWORTH,
Clerk

/jab
Mr. George E. Morse
Mr. James Armstrong Walters
Mr. M. B. Montgomery
Mr. Jack H. Young
Ms. Barbara A. Morris and
Mr. Robert L. Carter
Mr. Melvin Zarr
Mr. Howard Moore, Jr.
Mr. Alvin J. Bronstein
Mr. Carl Rachlin
Mr. Benjamin E. Smith
Mr. Eddie H. Tucker
Mr. L. H. Rosenthal
Miss Emily Grodon
and Mr. Bob Weil

* This is only the date on which it is now expected that the matter will be forwarded for ruling, and does not mean that this office will be able to advise counsel of the Court's action by then. Counsel should allow at least ten days' time thereafter for advice as to the Court's ruling before making inquiry.

United States Court of Appeals

FIFTH CIRCUIT

EDWARD W. WADSWORTH
CLERK

OFFICE OF THE CLERK

ROOM 408 - 400 ROYAL ST.
NEW ORLEANS, LA. 70130

June 26, 1967

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

Re: No. 24926 - American Liberty Insurance Company
-vs- Arlena L. Smith, Et Al.

Gentlemen:

The following action has this day been taken in the above case:

(XX) An extension of time has been granted to and including July 25, 1967. to withdraw record for reproduction.

( ) for filing and docketing record on appeal.

( ) for payment of estimated printing costs.

( ) for filing appellant's printing designation.

( ) for filing appellee's printing designation.

( ) for filing reproduced copies of the record.

( ) for filing appellant's brief.

( ) for filing appellee's brief.

( ) for filing a petition for rehearing.

( ) The Court's opinion has this day been rendered and a copy thereof is enclosed.

( ) Order enclosed has been entered.

( )

/jab

Mr. Paul W. Brock
Mr. George E. Morse
Mr. James Armstrong Walters
Mr. M. B. Montgomery
Mr. Jack H. Young
Ms. Barbara A. Morris and
Mr. Robert L. Carter
Mr. Melvin Zarr
Messrs. Dave Dennis, Robert Moses & Bob Weil
and Miss Emily Grodon

Mr. Howard Moore, Jr.
Mr. Alvin J. Bronstein
Mr. Carl Rachlin
Mr. Eddie H. Tucker
Mr. Benjamin E. Smith
Mr. L. H. Rosenthal

Very truly yours,

EDWARD W. WADSWORTH, Clerk

By) R. E. Hindhoest, Jr.

Deputy Clerk

FPI—LK—4-13-66—10M—6077

File Smith v Harrison

HAND, ARENDALL, BEDSOLE, GREAVES & JOHNSTON
LAWYERS
FIRST NATIONAL BANK BUILDING
MOBILE, ALABAMA
36601

CHAS. C. HAND
C. B. ARENDALL, JR.
T. MASSEY BEDSOLE
THOMAS G. GREAVES, JR.
WM. BREVARD HAND
VIVIAN G. JOHNSTON, JR.
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EDMUND R. CANNON
LYMAN F. HOLLAND, JR.
J. THOMAS HINES, JR.
DONALD F. PIERCE
LOUIS E. BRASWELL
HAROLD D. PARKMAN
G. PORTER BROCK, JR.
HARWELL E. COALE, JR.
STEPHEN G. CRAWFORD
JERRY A. McDOWELL
W. RAMSEY McKINNEY, JR.
LARRY U. SIMS
C. WAYNE LOUDERMILCH

MAILING ADDRESS:
P. O. BOX 123

CABLE ADDRESS:
HAB

TELEPHONE:
432-5511
AREA CODE 205

June 27, 1967

AIRMAIL
SPECIAL DELIVERY

Honorable Edward W. Wadsworth
Clerk, U. S. Court of Appeals for
the Fifth Circuit
Office of the Clerk
Room 408, 400 Royal Street
New Orleans, Louisiana 70130

Re: American Liberty Insurance Company
v. Arlena L. Smith, et al.
Appeal No. 24926

Dear Mr. Wadsworth:

Pursuant to our telephone conversation this morning, this is to confirm our understanding that the motion which we have filed for stay of proceedings will not be set for hearing for the present, in view of the fact that we have now received notice that the damage suit which we were seeking to stay has now been continued from its July 10, 1967 setting. However, we do not wish to withdraw the motion, since we may desire a hearing on the motion in the event the damage suit is reset for trial during the pendency of the appeal.

Thank you for your consideration and assistance in this matter.

Yours very truly,

Harold D. Parkman

For the Firm

HDP/cm

cc: George Morse, Esq.
James A. Walters, Esq.
M. B. Montgomery, Esq.
Jack H. Young, Esq.
Howard Moore, Jr., Esq.
Barbara A. Morris and
Robert L. Carter, Esq.
Melvyn Zarr, Esq.
Jess Brown, Esq.
Alvin J. Bronstein, Esq.
Carl Rachlin, Esq.
Benjamin E. Smith, Esq.
Eddie H. Tucker, Esq.

BARNETT, MONTGOMERY, McCLINTOCK & CUNNINGHAM
ATTORNEYS AT LAW
SUITE 315-321 BARNETT BUILDING
JACKSON, MISSISSIPPI
39205

June 29, 1967

ROSS R. BARNETT
JUDGE M. B. MONTGOMERY
GEORGE T. McCLINTOCK
E. HUGH CUNNINGHAM, JR.
ROSS R. BARNETT, JR.
P. Z. JONES, JR.

P. O. BOX 1288
TELEPHONE 948-6640

File

Mr. Carl Rachlin
Attorney at Law
38 Park Row
New York, New York

Dear Sir:

Re: Arlena L. Smith, et al
vs:
Grover Cleveland Harrison

I enclose herewith copy of Reply to Appellant's Motion for Injunction and Stay of Proceedings Pending Appeal which I am filing with the Fifth Circuit Court of Appeals.

Sincerely yours,

M. B. Montgomery

M. B. Montgomery

MBM/vh
Enclosure

UNITED STATES COURT OF APPEALS

FIFTH CIRCUIT

Office of the Clerk

EDWARD W. WADSWORTH,
Clerk

400 Royal Street
New Orleans, La.

June 30, 1967

Mr. Paul W. Brock
Attorney at Law
P. O. Box 123
Mobile, Ala. 36601

Re: No. 24926 - American Liberty Insurance Company v. Arlena L. Smith, et al

Dear Sir:

Pursuant to Rule 20, Paragraph (3) copy of which is enclosed, you are hereby notified that upon the expiration of fifteen (15) days from this date, the appeal in the referenced cause will be dismissed by the Clerk for the Court for want of prosecution, unless within that time you remedy your present default under the rules, which default is for your failure to withdraw the record for reproduction within the ten (10) day period fixed by Rule 23(a).

Very truly yours,

EDWARD W. WADSWORTH,
Clerk

By George Dixon
Deputy Clerk

rk

cc-Mr. George E. Morse
Mr. James A. Walters
Mr. M. B. Montgomery
Messrs. Jack H. Young & Eddie H. Tucker
Miss Barbara A. Morris & Mr. Robert L. Carter
Mr. Melvin Zarr
Mr. Howard Moore, Jr.
Mr. Alvin J. Bronstein
Mr. Carl Rachlin
Mr. Benjamin Smith
Mr. L. H. Rosenthal
Messrs. Dave Dennis, Robert Moses, Bob Weil & Miss Emily Grodon

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

RULE 20

DISMISSING CASES

(1) Whenever the appellant and appellee in an appeal, pending in this court, shall by their attorneys of record sign and file with the clerk an agreement in writing directing the case to be dismissed, and specifying the terms on which it is to be dismissed, as to costs, and shall pay to the clerk any fees that may be due to him, it shall be the duty of the clerk to enter the case dismissed, and to give to either party requesting it a copy of the agreement filed; but no mandate or other process shall issue without an order of the court.

(2) In all cases where the appellant or petitioner files a motion to withdraw his appeal or agency review proceeding, the clerk shall enter the case dismissed or withdrawn in the same manner as is provided in paragraph (1) above, after notice.

(3) When an appellant in either a docketed or non-docketed appeal, other than a pauper appeal from a judgment of conviction or from a Section 2255 or habeas corpus denial, fails to comply with the rules of this court requiring the processing of such appeals to a hearing, the clerk shall, after issuance of the notices as required by the rules, notify appellant or his counsel that upon the expiration of fifteen (15) days from the date thereof the appeal will be dismissed for want of prosecution under the court's rules, unless prior to that date a party remedies his default. Should appellant fail to comply within said fifteen-day period, the clerk shall then enter an order dismissing said appeal for want of prosecution, and shall issue a certified copy thereof to the Clerk of the District Court as and for the mandate.

United States Court of Appeals
FIFTH CIRCUIT

EDWARD W. WADSWORTH
CLERK

OFFICE OF THE CLERK

ROOM 408 - 400 ROYAL ST.
NEW ORLEANS, LA. 70130

July 6, 1967

Mr. Paul W. Brock
Attorney at Law
P. O. Box 123
Mobile, Alabama 36601

Re: No. 24926 - American Liberty Insurance Company -vs- Arlena L. Smith, Et Al

Dear Sir:

Please disregard our letter of June 30, 1967, with reference to possible dismissal under Rule 20, since you were previously granted an extension of time for withdrawal of the record on appeal in the above case for the purpose of reproduction or for designation as to printing, to and including July 25, 1967.

Very truly yours,

EDWARD W. WADSWORTH
Clerk

By R. E. Windhorst, Jr.
R. E. Windhorst, Jr.
Deputy Clerk

REWjr/llc

cc: Mr. George E. Morse
Mr. James Armstrong Walters
Mr. M. B. Montgomery
Messrs. Jack H. Young and Eddie H. Tucker
Miss Barbara A. Morris and Mr. Robert L. Carter
Mr. Melvin Zarr
Mr. H. Ward Moore, Jr.
Mr. Alvin Bronstein
Mr. Carl Rachlin
Mr. Benjamin E. Smith
Messrs. L. H. Rosenthal, Dave Dennis, Robert Moses, Bob Weil & Miss Emily Grodon

United States Court of Appeals

FIFTH CIRCUIT

EDWARD W. WADSWORTH
CLERK

OFFICE OF THE CLERK

ROOM 408-400 ROYAL ST.
NEW ORLEANS, LA. 70130
TEL. NO. 527-6514

November 16, 1967

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

Re No. 23125 - Rochelle Steele, Et Al.
versus - George B. Taft, Et Al.

Gentlemen:

The following action has this day been taken in the above case:

(XX) An extension of time has been granted to and including November 30, 1967.

( ) for filing and docketing record on appeal.

( ) for payment of estimated printing costs.

( ) for filing appellant's printing designation.

( ) for filing appellee's printing designation.

( ) for filing reproduced copies of the record.

(XX) for filing appellant's brief.

( ) for filing appellee's brief.

( ) for filing a petition for rehearing.

( ) The Court's opinion has this day been rendered and a copy thereof is enclosed.

( ) Order enclosed has been entered.

( )
/jab
Mr. Carl Rachlin
Mr. John D. Due, Jr.
Mr. Roy T. Rhodes
Mr. Rivers Buford, Jr.

Very truly yours,
EDWARD W. WADSWORTH, Clerk

By) G J Bannochie
Deputy Clerk

FPI—LK—8-21-67—20M—7414

Alias Summons

CORE

SUMMONS IN A CIVIL ACTION

D. C. Form No. 45a Rev. (6-49)

United States District Court

FOR THE

SOUTHERN DISTRICT OF MISSISSIPPI

CIVIL ACTION FILE NO. 3018(S)(C)

Arlena L. Smith, Bébbie L. McMullen, and Betty L. Goldy

Plaintiff

v.

Grover Cleveland Harrison, Student Nonviolent Coordinating Committee, National Association for the Advancement of Colored People, Southern Christian Leadership Conference, Council of Racial Equality, and Council of Federated Organizations

Defendant

SUMMONS

SUMMONS IN CIVIL ACTION

Returnable not later than ____ days after service.

Attorney for Plaintiff.

FJ1—LK—3-3-65—20M—1888

To the above named Defendant :

James A. Walters
Attorney at Law

You are hereby summoned and required to serve upon

plaintiff's attorney, whose address

519 2nd Avenue
Columbus, Miss.

an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgement by default will be taken against you for the relief demanded in the complaint.

LORYCE E. WHARTON

Clerk of Court.

Kay Seymour

Deputy Clerk.

Date: 3-31-65

[Seal of Court]

Note: This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

MISSISSIPPI 1967 (FT)

File Jurgit Harrison

IN THE UNITED STATES DISTRICT COURT FOR THE

SOUTHERN DIVISION OF THE

SOUTHERN DISTRICT OF MISSISSIPPI

AMERICAN LIBERTY INSURANCE COMPANY, a corporation,	:	
Plaintiff	:	
v.	:	CIVIL ACTION NO. 3040 (S)(C)
ARLENA L. SMITH, et al.,	:	
Defendants	:	

NOTICE

TO: Arlena L. Smith, Bobbie L. McMullen
and Betty L. Goldie
c/o James Armstrong Walters
Attorney at Law
519 North 2nd Avenue
Columbus, Mississippi

Mr. M. B. Montgomery
Attorney at Law
Barnett, Montgomery, McClintock & Cunningham
P. O. Box 1288
Jackson, Mississippi

Grover Cleveland Harrison
c/o Jack H. Young
Attorney at Law
115-1/2 North Farish Street
Jackson, Mississippi

and

c/o Howard Moore, Jr.
Attorney at Law
859-1/2 Hunter Street, N.W.
Atlanta, Georgia

Sojourner Motor Fleet, Inc.
c/o Jack H. Young
Attorney at Law
115-1/2 North Farish Street
Jackson, Mississippi

and

c/o Howard Moore, Jr.
Attorney at Law
859-1/2 Hunter Street, N.W.
Atlanta, Georgia

National Association for the Advancement
of Colored People
c/o Jack H. Young
Attorney at Law
115-1/2 North Farish Street
Jackson, Mississippi

and

c/o Barbara A. Morris and Robert L. Carter
Attorneys at Law
20 West 40th Street
New York, New York

Southern Christian Leadership Conference
c/o Jack H. Young
Attorney at Law
115-1/2 North Farish Street
Jackson, Mississippi

Student Non-Violent Co-ordinating Committee
c/o Jack H. Young
115-1/2 North Farish Street
Jackson, Mississippi

and

c/o Howard Moore, Jr.
Attorney at Law
859-1/2 Hunter Street, N.W.
Atlanta, Georgia

Congress of Racial Equality
c/o Jess Brown
Attorney at Law
125-1/2 North Farish Street
Jackson, Mississippi

and

c/o Alvin J. Bronstein
Attorney at Law
602 North Farish Street
Jackson, Mississippi

and

c/o Carl Rachlin
Attorney at Law
38 Park Row
New York, New York

Council of Federated Organizations
39 Park Row
New York, New York

and

c/o Benjamin E. Smith
Attorney at Law
1006 Baronne Building
New Orleans, Louisiana

and

c/o Dave Dennis, Robert Moses,
Bob Weil and Emily Grodon
1017 Lynch Street
Jackson, Mississippi

Eddie H. Tucker
Attorney at Law
115-1/2 North Farish Street
Jackson, Mississippi
Attorney for Grover Cleveland Harrison,
Sojourner Motor Fleet, Inc. and Student
Non-Violent Coordinating Committee

Southern Christian Leadership Conference
c/o Melvyn Zarr
Attorney at Law
10 Columbus Circle
New York, New York

Please take notice that the motion of American Liberty Insurance Company to vacate and set aside the judgment of the court of February 17, 1966, dismissing the above styled cause, and praying for other relief, which motion was filed on February 25, 1966, and was first noticed for hearing before Hon. William Harold Cox, U. S. District Judge, Biloxi, Mississippi, on March 7, 1966, at 9:00 A.M., in the Court Room of the Federal Building, Biloxi, Mississippi, will be brought on before said Hon. William Harold Cox, U. S. District Judge, in the Court Room of the Federal Building, Biloxi, Mississippi, at any time the court may find convenient.

Paul W. Brock

Paul W. Brock

Of Counsel:

HAND, ARENDALL, BEDSOLE, GREAVES & JOHNSTON

CERTIFICATE OF SERVICE

I, Paul W. Brock, one of the attorneys of record for the plaintiff in the above styled cause, hereby certify that a true copy of the foregoing notice has this day been mailed, postage prepaid, to the above named addressees at their respective addresses shown, and a copy thereof has been mailed to U. S. District Clerk at Biloxi, Mississippi, for filing.

This 15th day of February, 1967.

Paul W. Brock

Paul W. Brock

File D
Smith v Harrison

IN THE UNITED STATES DISTRICT COURT FOR THE

SOUTHERN DISTRICT OF MISSISSIPPI

SOUTHERN DIVISION

AMERICAN LIBERTY INSURANCE COMPANY, a corporation,	:	
Plaintiff,	:	
v.	:	CIVIL ACTION NO. 3040(s)(c)
ARLENA L. SMITH, et al,	:	
Defendants.	:	

MOTION TO RESTRAIN THE PROSECUTION OF SUIT

Comes now the plaintiff in the above cause and moves the court to enter an order enjoining, restraining or staying the further prosecution of Civil Action No. 3018 (s)(c), pending in this court, styled Arlena L. Smith, et al., versus Grover Cleveland Harrison, et al. In the alternative, the plaintiff moves that the court continue said Civil Action No. 3018 (s)(c) from its present setting on, to-wit, March 22, 1967. In support of each of the foregoing motions, separately and severally, plaintiff refers the court to its allegations contained in its bill of complaint herein, which bill of complaint is herewith incorporated by reference and made a part hereof. For further separate and additional grounds, plaintiff avers that if it should be determined in this present action that the plaintiff does have coverage under its said policy, which it denies, it would have the right under the provisions thereof to maintain a defense of certain of said defendants as to Civil Action No. 3018 (s)(c), and that if said action

is allowed to proceed to judgment prior to the determination of coverage herein sought, then plaintiff will have been irreparably damaged and injured in that it will not have been afforded the opportunity of defending said suit, of attempting to settle the same or of taking any other appropriate action.

As further additional and separate grounds in support of each of said motions, separately, plaintiff shows unto the court that some or all of the parties hereto previously indicated their desire to have this declaratory judgment action determined prior to the trial of Civil Action No. 3018 (s)(c); that the insurance coverage question will ultimately have to be determined and that it would be to the advantage of all parties for such question to be decided prior to the trial of Civil Action No. 3018 (s)(c).

Plaintiff prays for such other, further, different and general relief to which it may be entitled, the premises considered.

George E. Morse, by PWB

George E. Morse,
Attorney for Plaintiff,
Hatten Building,
Gulfport, Mississippi

Paul W. Brock

Paul W. Brock,
Attorney for Plaintiff,
First National Bank Building,
Mobile, Alabama.

Of Counsel, respectively:

MORSE & MORSE
HAND, ARENDALL, BEDSOLE, GREAVES & JOHNSTON

NOTICE

Please take notice that the undersigned will bring the above and foregoing motion on for hearing before the Honorable Harold Cox, Judge, United States District Court for the Southern District of Mississippi, in the chambers of his Honor in the United States Post Office Building at Jackson, Mississippi, on the 17th day of March, 1967, at 9:00 A.M. of that day or as soon thereafter as counsel may be heard.

Paul W. Brock

Paul W. Brock

CERTIFICATE OF SERVICE

I hereby certify that I have mailed a true and correct copy of the foregoing Motion to Restrain the Prosecution of Suit and Notice to L. H. Rosenthal, Esq., Attorney for Defendant Council of Federated Organizations; Benjamin E. Smith, Esq., Attorney for Defendant Council of Federated Organizations; Jack H. Young, Esq., Attorney for Defendants National Association for the Advancement of Colored People and Southern Christian Leadership Conference; Barbara A. Morris and Robert L. Carter, Esq., Attorneys for Defendant National Association for the Advancement of Colored People; Melvin Zarr, Esq., Attorney for Defendant Southern Christian Leadership Conference; Howard Moore, Jr., Esq., Attorney for Defendants Grover Cleveland Harrison, Sojourner Motor Fleet, Inc., and Student Non-Violent Co-ordinating Committee; James Armstrong Walters, Esq., Attorney for Defendants Arlena L. Smith, Bobbie L. McMullen and Betty L. Goldie; Alvin J. Bronstein, Esq., Attorney for Defendant Congress of Racial Equality; Jess Brown, Esq., Attorney for Defendant Congress of Racial Equality; Carl Rachlin, Esq., Attorney for Defendant Congress of Racial Equality; M. B. Montgomery, Esq., and Emily Gordan and Messrs. Dave Dennis, Robert Moses and Bob Weil, by depositing a copy of same in the United States mail, postage prepaid, addressed to said attorneys and individuals at their respective offices on this, the 10th day of March, 1967.

Paul W. Brock

Paul W. Brock

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
BILOXI DIVISION

NO. 3018

ARLENA L. SMITH,
BOBBIE L. McMULLEN and
BETTY L. GOLDY — PLAINTIFFS

VS.

GROVER CLEVELAND HARRISON,
STUDENT NONVIOLENT COORDINATING
COMMITTEE, NATIONAL ASSOCIATION
FOR THE ADVANCEMENT OF COLORED
PEOPLE, SOUTHERN CHRISTIAN
LEADERSHIP CONFERENCE, COUNCIL OF
RACIAL EQUALITY and COUNCIL OF
FEDERATED ORGANIZATIONS — DEFENDANTS

TO:

Grover Cleveland Harrison
c/o Jack H. Young,
Attorney at Law
115½ N. Farish Street
Jackson, Mississippi 39201
and
c/o Howard Moore, Jr.
Attorney at Law
859½ Hunter Street, N. W.
Atlanta, Georgia 30314

Student Nonviolent Coordinating Committee
c/o Jack Young
Attorney at Law
115½ N. Farish Street
Jackson, Mississippi 39201
and
c/o Howard Moore, Jr.
Attorney at Law
859½ Hunter Street, N. W.
Atlanta, Georgia 30314

National Association for the Advancement
of Colored People
c/o Jack H. Young
Attorney at Law
115½ N. Farish Street
Jackson, Mississippi 39201
and
c/o Robert L. Carter
Attorney at Law
20 West 40th Street
New York, New York 10018
and

c/o Barbara A. Morris
Attorney at Law
20 West 40th Street
New York, New York 10018

Southern Christian Leadership Conference
c/o Jack H. Young
Attorney at Law
115½ N. Farish Street
Jackson, Mississippi 39201

Council of Racial Equality
c/o R. Jess Brown
Attorney at Law
125 N. Farish Street
Jackson, Mississippi 39201
and
c/o Alvin J. Bronstein
Attorney at Law
603 N. Farish Street
Jackson, Mississippi 39202
and
c/o Carl Rachlin
Attorney at Law
38 Park Row
New York, New York 10038

NOTICE TO TAKE DEPOSITION

TO THE ABOVE NAMED PARTIES AND TO THEIR
ABOVE NAMED RESPECTIVE ATTORNEYS:-

Please take notice that the Plaintiffs herein will take, in the above entitled action to be used as authorized by the Federal Rules of Civil Procedure, the deposition of Dr. Aaron E. Henry, witness, before Honorable Charles L. Sullivan, a Notary Public, who is not of counsel nor attorney for any of the parties to, nor relative nor employee of such counsel, or attorney, nor interested in this case, on Wednesday, the 26th day of April, 1967, at 2:00 P. M., in the office of the Clerk of the U. S. District Court, Northern District of Mississippi, Delta Division, or in a room to be provided by said Clerk or his Deputy in the Federal Building, Clarksdale, Mississippi, at which time and

place you are hereby notified to appear and take such part in such examination as you may be advised, and as shall be fit and proper.

This the 14 day of April, 1967.

Malcolm B. Montgomery
Malcolm B. Montgomery
Attorney at Law
315-321 Barnett Building
Jackson, Mississippi

OF COUNSEL:-

BARNETT, MONTGOMERY, McCLINTOCK
& CUNNINGHAM
315-321 Barnett Building
Jackson, Mississippi

CERTIFICATE OF SERVICE

I, Malcolm B. Montgomery, of counsel for the Plaintiffs, do hereby certify that I have mailed a true and correct copy of the foregoing Notice to Jack H. Young, 115½ N. Farish Street. Jackson, Mississippi; to Howard Moore, Jr., 859½ Hunter Street, N. E., Atlanta, Georgia 30314; to Robert L. Carter, 20 West 40th Street, New York, New York, 10018; to Barbara A. Morris, 20 West 40th Street, New York, New York, 10018; to R. Jess Brown, 125 N. Farish Street, Jackson, Mississippi, to Alvin J. Bronstein, 603 N. Farish Street, Jackson, Mississippi, and to Carl Rachlin, 38 Park Row, New York, New York, 10038, by depositing a copy of same in the United States mail, postage prepaid, addressed to above named attorneys, respectively, at their respective addresses above stated, being the last known post office address of each of them.

This the 14th day of April, 1967.

Malcolm B. Montgomery
Malcolm B. Montgomery
Of Counsel for Plaintiff

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

AMERICAN LIBERTY INSURANCE COMPANY PLAINTIFF

VS. CIVIL ACTION NUMBER 3040

ARLENA L. SMITH, ET AL., DEFENDANTS

MOTION

Comes now American Liberty Insurance Company, Plaintiff in the above styled cause, and shows unto the court as follows:

I

That on February 17, 1966, a judgment was entered by this court decreeing that the court had no jurisdiction of this cause because of improper venue and dismissing the same (a copy of said judgment and the supportin g memorandum are attached hereto and marked respectively as Exhibits "A" and "B"); and

II

On February 23, 1966, plaintiff filed motions to reconsider, praying, inter alia that the aforesaid judgment be set aside and that plaintiff be permitted to amend its complaint by striking any defendant as to which venue was improper and which defendant had not previously waived its right to object to venue (a copy of said motions is attached hereto and marked Exhibit "C"); and

III

A hearing on the question of venue was subsequently held before this court on, to-wit, March 6th, 1967, and briefs were filed by the respective parties hereto on the legal questions presented; and

IV

Subsequent to such hearing and on, to-wit, May 2, 1967, this court entered an order (filed May 3, 1967) overruling plaintiff's motion of February 17, 1966, and stating in part that there is not complete diversity

of citizenship between this plaintiff and "the voluntary associations who have members in Alabama," without granting plaintiff leave to amend its complaint or to be heard on the question of diversity (a copy of said order is attached hereto and marked Exhibit "D").

WHEREFORE, American Liberty Insurance Company moves the court to relieve it from the aforesaid judgments by amending same to grant plaintiff leave to file a complaint amended as follows:

(1). By dismissing as parties defendant the Congress of Racial Equality, Council of Federated Organizations, and any defendant as to which venue would be improper and which said defendant has not waived its right to object to venue; and

(2). By dismissing Student Non-Violent Coordinating Committee as a party defendant and any other voluntary association which has shown that it has members resident in the State of Alabama; and

(3) By joining as parties defendant, X, Y and Z, being residents of the State of Mississippi, members of Student Non-Violent Coordinating Committee, and representative parties on its behalf, and as grounds for such amendment plaintiff shows as follows:

(a) The membership of Student Non-Violent Coordinating Committee is so numerous that joinder of all its members is impractical;

(b) There are questions of law or fact common to the class;

(c) The claims or defenses of the representative parties are typical of the claims or defenses of the class; and

(d) The represantative parties will fairly and adequately protect the interests of the class.

(4) Plaintiff further moves the court to relieve it from the aforesaid judgments of, to-wit, February 17, 1966, and of, to-wit, May 2, 1967, by withdrawing those portions of the same inconsistent herewith, and by ordering this cause set for trial as soon as possible. Plaintiff asks the

court to make such other order or orders in the premises as the court shall deem just.

Hand, Arendall, Bedsole, Greaves
and Johnston
Mobile, Alabama

MORSE AND MORSE
Hatten Bldg., Gulfport, Mississippi
Attorneys for Plaintiff

BY: George E. Morse

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

SOUTHERN DISTRICT OF MISSISSIPPI
FILED
FEB 17 1966
ROBERT C. THOMAS, CLERK
BY
DEPUTY

CIVIL ACTION NUMBER 3040

AMERICAN LIBERTY INSURANCE COMPANY PLAINTIFF

V.

ARLENA L. SMITH, ET AL DEFENDANTS

J U D G M E N T

THE COURT having heard and considered this case on motion to dismiss for lack of jurisdiction, and being of the opinion that it has no jurisdiction herein for the reasons stated in a memoranda of even date herewith;

IT IS ORDERED AND ADJUDGED that this Court has no jurisdiction of this case and that it is, therefore, dismissed at the cost of the plaintiff to be taxed according to law and for which process may issue.

ORDERED AND ADJUDGED, this February 17, A.D., 1966.

s/ Harold Cox
UNITED STATES DISTRICT JUDGE

Exhibit "A"

SOUTHERN DISTRICT OF MISSISSIPPI
FILED
FEB 17 1966
ROBERT C. THOMAS, CLERK
BY DEPUTY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

CIVIL ACTION NUMBER 3040

AMERICAN LIBERTY INSURANCE COMPANY PLAINTIFF

V.

ARLENA L. SMITH, ET AL DEFENDANTS

This is a suit for a declaratory judgment on a casualty insurance policy issued by the plaintiff to Sojourner Motor Fleet, Inc. Most of the evidence before the Court on the motion to dismiss for lack of jurisdiction hinges around the residence of defendant, Grover Cleveland Harrison. It is established to the satisfaction of the Court that the residence of that defendant is Atlanta, Georgia and not Yantley, Alabama. But, throughout this proceeding and upon a careful examination of this entire file, it is not made apparent that this Court has any jurisdiction of this case. The plaintiff is a resident of Alabama. The defendants certainly do not all live in Mississippi. Yet, a suit cannot be maintained in this Court on diversity jurisdiction unless either all of the plaintiffs or all of the defendants reside in Mississippi. That venue requirement is jurisdictional. 28 USC 1958 Edition §1391. A consideration of 28 USC 1958 Edition §1404 (a) does not suggest a transfer of this case to another district under the circumstances. The case will be dismissed for lack of jurisdiction.

February 17, 1966

s/ Harold Cox
UNITED STATES DISTRICT JUDGE

Exhibit "B"

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI SOUTHERN
DIVISION

AMERICAN LIBERTY INSURANCE COMPANY PLAINTIFF

VS. CIVIL ACTION NUMBER 3040

ARLENA L. SMITH, ET AL., DEFENDANTS

MOTIONS

Comes now the plaintiff, American Liberty Insurance Company, and files the following separate and several motions:

I

To vacate and set aside the judgment of the court of February 17, 1966, dismissing the above cause.

II

In the alternative and in furtherance of justice, to transfer said cause to the United States District Court of either the Southern or Northern District Alabama, under the provision of Title 28, Section 1406(a), U.S.C., or to any judicial district in which it could have been brought.

III

In the alternative, to set aside the judgment of the court of February 17, 1966, dismissing said cause, and to permit plaintiff to amend its Bill of Complaint, without prejudice, by striking the Congress of Racial Equality as a defendant and any defendant as to which venue would be improper and which defendant has not waived its right to object to venue.

IV

To amend said judgment of February 17, 1966, dismissing said cause so as to provide that the same shall be without prejudice to the plaintiff as to any of the issues of said cause or as to any issues which could have been litigated in said cause.

V

To set this cause for trial following the court's ruling on these motions, separately.

Exhibit "C"

GROUNDS

Plaintiff assigns the following separate and several grounds in support of each of the foregoing motions, separately and severally:

I

For that said judgment is contrary to law.

II

For that venue is proper in this cause and this court has jurisdiction thereof.

III

For that venue is proper under the provisions of Title 28, Section 1391(c), which is applicable to corporate plaintiffs as well as to corporate defendants. Plaintiff has at all times pertinent hereto been licensed to do business in the State of Mississippi, and has had a statutory agent for the service of process in the State of Mississippi.

IV

For that this cause arises out of the operation of an automobile and, hende, venue is proper under the provisions of Title 28, Section 1391(s), U.S.C.

V

For that there has been a waiver of the right to object to venue by some or all of the defendants herein.

Hand, Arendall, Bedsole, Greaves
and Johnston
First National Bank Bldg.,
Mobile, Alabama

MORSE AND MORSE
Hatten Bldg., Gulfport, Mississippi
Attorneys for Plaintiff

BY: _____

SOUTHERN DISTRICT OF MISSISSIPPI
FILED
MAY 3 - 1967
ROBERT C. THOMAS, CLERK
BY DEPUTY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

CIVIL ACTION NUMBER 3040

AMERICAN LIBERTY INSURANCE COMPANY — PLAINTIFF

v.

ARLENA L. SMITH, ET AL — DEFENDANTS

ORDER OVERRULING MOTION
TO VACATE JUDGMENT OF FEBRUARY 17, 1966

THIS CAUSE being heard on plaintiff's motion to vacate the order of dismissal herein dated February 17, 1966; it appearing to the Court that unnecessary confusion has attended the noticing of this motion, attendance at hearings and orderly presentation thereof and the Court being of the opinion that there is not complete diversity of citizenship between the Alabama plaintiff and the voluntary associations who have members in Alabama, and that jurisdiction here is extremely doubtful, although no doubt exists as to jurisdiction by statute of the automobile accident case involved; and the plaintiff having no vested right to maintain a suit of this nature here and the Court being of the opinion that fairness to all parties in interest indicates the necessity for a trial of the projected issues in a regular suit wherein no possible prejudice may intervene or cast its influence;

IT IS, THEREFORE, ORDERED AND ADJUDGED by the Court that plaintiff's motion to vacate said former order of this Court is without merit and is denied.

ORDERED, this May 2, A. D., 1967.

A TRUE COPY, I HEREBY CERTIFY,
ROBERT C. THOMAS, CLERK
By Ray Seymour
5/3/67

s/ Harold Cox
UNITED STATES DISTRICT JUDGE

Exhibit "D"

SOUTHERN DISTRICT OF MISSISSIPPI
FILED
MAY 3 - 1967
ROBERT C. THOMAS, CLERK
BY DEPUTY

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

CIVIL ACTION NUMBER 3040

AMERICAN LIBERTY INSURANCE COMPANY — PLAINTIFF

v.

ARLENA L. SMITH, ET AL — DEFENDANTS

ORDER OVERRULING MOTION
TO VACATE JUDGMENT OF FEBRUARY 17, 1966

THIS CAUSE being heard on plaintiff's motion to vacate the order of dismissal herein dated February 17, 1966; it appearing to the Court that unnecessary confusion has attended the noticing of this motion, attendance at hearings and orderly presentation thereof and the Court being of the opinion that there is not complete diversity of citizenship between the Alabama plaintiff and the voluntary associations who have members in Alabama, and that jurisdiction here is extremely doubtful, although no doubt exists as to jurisdiction by statute of the automobile accident case involved; and the plaintiff having no vested right to maintain a suit of this nature here and the Court being of the opinion that fairness to all parties in interest indicates the necessity for a trial of the projected issues in a regular suit wherein no possible prejudice may intervene or cast its influence;

IT IS, THEREFORE, ORDERED AND ADJUDGED by the Court that plaintiff's motion to vacate said former order of this Court is without merit and is denied.

ORDERED, this May 2, A. D., 1967.

[illegible]
UNITED STATES DISTRICT JUDGE

5/3/67

EXHIBIT "Q"

Smith v. Harrison File

IN THE UNITED STATES DISTRICT COURT FOR THE

SOUTHERN DISTRICT OF MISSISSIPPI

SOUTHERN DIVISION

AMERICAN LIBERTY INSURANCE COMPANY, a corporation,	:	
Plaintiff,	:	
Vs.	:	CIVIL ACTION NO. 3040(s)(c)
ARLENA L. SMITH, et al,	:	
Defendants.	:	

NOTICE

TO: Arlena L. Smith,
Bobbie L. McMullen
and Betty L. Goldie
c/o James Armstrong Walters
Attorney at Law
519 North 2nd Avenue
Columbus, Mississippi

M. B. Montgomery, Esq.
Attorney at Law
Barnett, Montgomery, McClintock & Cunningham
P. O. Box 1288
Jackson, Mississippi

Grover Cleveland Harrison
c/o Jack H. Young
Attorney at Law
115-1/2 North Farish Street
Jackson, Mississippi
and
c/o Howard Moore, Jr.
Attorney at Law
859-1/2 Hunter Street, N. W.
Atlanta, Georgia

Sojourner Motor Fleet, Inc.
c/o Jack H. Young
Attorney at Law
115-1/2 North Farish Street
Jackson, Mississippi
and
c/o Howard Moore, Jr.
Attorney at Law
859-1/2 Hunter Street, N. W.
Atlanta, Georgia

National Association for the Advancement
of Colored People
c/o Jack H. Young
Attorney at Law
115-1/2 North Farish Street
Jackson, Mississippi
and
c/o Barbara A. Morris
and Robert L. Carter
Attorneys at Law
20 West 40th Street
New York, New York

Southern Christian Leadership Conference
c/o Jack H. Young
Attorney at Law
115-1/2 North Farish Street
Jackson, Mississippi
and
c/o Melvin Zarr
10 Columbus Circle
New York, New York 10019

Student Non-Violent Co-ordinating Committee
c/o Jack H. Young
Attorney at Law
115-1/2 North Farish Street
Jackson, Mississippi
and
c/o Howard Moore, Jr.
Attorney at Law
859-1/2 Hunter Street, N. W.
Atlanta, Georgia

Congress of Racial Equality
c/o Jess Brown
Attorney at Law
125-1/2 North Farish Street
Jackson, Mississippi
and
c/o Alvin J. Bronstein
Attorney at Law
602 North Farish Street
Jackson, Mississippi
and
c/o Carl Rachlin
Attorney at Law
38 Park Row
New York, New York

Council of Federated Organizations
38 Park Row
New York, New York
and
c/o Benjamin E. Smith
Attorney at Law
1006 Baronne Building
New Orleans, Louisiana

and
c/o Dave Dennis, Robert Moses, Bob Weil,
and Emily Grodon
1017 Lynch Street
Jackson, Mississippi

Eddie H. Tucker
Attorney at Law
115-1/2 North Farish Street
Jackson, Mississippi
Attorney for Grover Cleveland Harrison, Sojourner Motor Fleet, Inc. and Student Non-Violent Coordinating Committee

Southern Christian Leadership Conference
c/o Melvyn L. Zarr
Attorney at Law
10 Columbus Circle
New York, N.Y.

Please take notice that the attached motion will be brought on for hearing before Hon. William Harold Cox, United States District Judge, in his chambers, Post Office Building, Jackson, Mississippi, at 9:00 A.M., on June 1, 1967, or at such other time as may be convenient with the court.

Hand, Arendall, Bedsole, Greaves
& Johnston
First National Bldg., Mobile, Ala.

MORSE AND MORSE
Hatten Bldg., Gulfport, Mississippi

BY: George E. Morse

CERTIFICATE

I, George E. Morse, one of counsel for the plaintiff in the above styled cause, hereby certify that I have this day mailed, postage prepaid, and where the recipients reside more than five hundred miles from Jackson, Mississippi, said notice has been sent by air mail, postage prepaid, a true copy of the above notice and attached motion to each of the above named individuals at the address shown, and a copy has been mailed to U.S. District Clerk, Biloxi, Mississippi, for filing.

This 25 day of May, 1967.

George E. Morse

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

CIVIL ACTION NUMBER 3040

AMERICAN LIBERTY INSURANCE COMPANY — PLAINTIFF

v.

ARLENA L. SMITH, ET AL. — DEFENDANTS

NOTICE OF APPEAL

Notice is hereby given that American Liberty Insurance Company, plaintiff in the above cause, hereby appeals to the United States Court of Appeals for the Fifth Circuit from the final judgment entered in this cause on, to-wit, February 17, 1966, and from the order of the Court overruling the motions of the plaintiff to vacate and set aside the aforesaid judgment, entered herein on, to-wit, May 3, 1967.

Dated this 1st day of June, 1967.

HAND, ARENDALL, BEDSOLE,
GREAVES and JOHNSTON
First National Bank Building
Mobile, Alabama

BY: /s/ Paul W. Brock

MORSE AND MORSE
Hatten Building
Gulfport, Mississippi

BY: /s/ George E. Morse

Attorneys for Plaintiff

EXHIBIT "S"

Smith v Harrison

IN THE UNITED STATES DISTRICT COURT FOR THE

SOUTHERN DISTRICT OF MISSISSIPPI

SOUTHERN DIVISION

AMERICAN LIBERTY INSURANCE COMPANY, a corporation,	:	
Plaintiff,	:	
v.	:	CIVIL ACTION
ARLENA L. SMITH, et al,	:	NO. 3040 (s) (c)
Defendants.	:	

DESIGNATION OF RECORD ON APPEAL

Appellant, American Liberty Insurance Company, designates the complete record and all of the proceedings and evidence in this action to be contained in the record on appeal. Without limiting the generality of the foregoing, but insisting upon the same, appellant further specifically designates the following:

1. The complaint for declaratory judgment and all exhibits accompanying said complaint.

2. Notice of motion of plaintiff for an order staying any proceedings in Civil Action No. 3018 (s) (c), together with certificate and motion attached filed on April 14, 1965.

3. Answer of Defendant Congress of Racial Equality.

4. Answer of Defendant Sojourner Motor Fleet, Inc.

5. Answer of Defendant Grover Cleveland Harrison.

6. Answer of Defendant National Association for the Advancement of Colored People.

7. Answer of Defendant Student Non-Violent Co-ordinating Committee.

8. Motion of Defendant Southern Christian Leadership Conference to dismiss.

9. Answer of Defendants Arlena L. Smith, Bobbie L. McMullen and Betty L. Goldie.

10. Motion to dismiss by Defendant Council of Federated Organizations, filed on August 31, 1965.

11. Plaintiff's motion for continuance of hearing on motion to dismiss filed by Defendant Council of Federated Organizations filed on September 3, 1965.

12. Motion for continuance of motion to dismiss filed by Southern Christian Leadership Conference on September 3, 1965.

13. The order of the court of September 16, 1965.

14. Request for admission of facts by Defendant Congress of Racial Equality filed October 7, 1965.

15. Request for admission of facts by Defendant Sojourner Motor Fleet, Inc. of September 7, 1965.

16. Answer to request for admission of facts by Defendant Congress of Racial Equality filed on October 15, 1965.

17. Plaintiff's motion for order striking Defendant COFO filed on November 1, 1965 and notice of same.

18. Plaintiff's motion for a judgment by default in favor of plaintiff for relief demanded in complaint filed on November 1, 1965.

19. The order of the court of November 8, 1965.

20. Motion of plaintiff to strike filed on November 10, 1965 and notice of same.

21. Motion for order that facts be taken as established filed on November 10, 1965 and notice of same.

22. The answer of Defendant Sojourner Motor Fleet filed on November 12, 1965 to plaintiff's request for admission of facts.

23. Motion of Defendant Grover Cleveland Harrison, Student Non-Violent Co-ordinating Committee and Sojourner Motor Fleet, Inc. to dismiss filed on November 12, 1965.

24. The motion of the defendant for default judgment filed on November 29, 1965.

25. Notice of motion together with amendment of Grover Cleveland Harrison, Sojourner Motor Fleet, Inc. and Student Non-Violent Co-ordinating Committee to their motion of want of jurisdiction and all exhibits accompanying said motion filed on November 30, 1965.

26. The certificate of registration of Grover Cleveland Harrison with all exhibits accompanying said certificate filed on December 3, 1965.

27. The sworn affidavit of J. B. Phillips, III, filed on December 3, 1965.

28. The sworn affidavit of Moody T. Crenshaw filed on December 3, 1965.

29. The order of the court of December 3, 1965.

30. The order and/or opinion of the court on February 17, 1966.

31. The order and judgment of the court of February 17, 1966.

32. The motion of American Liberty Insurance Company to vacate and set aside the judgment of February 17, 1966, with notice of same, all being filed on February 25, 1966.

33. The notice of filing of attached affidavit and certificate of license and all attachments accompanying said notice and certificate filed on March 2, 1966.

34. The notice of the motion of American Liberty to vacate and set aside the judgment filed on March 16, 1966.

35. The notice of motion to set aside the judgment with certificate of same filed on June 1, 1966.

36. All evidence and briefs taken at the hearing of, to-wit, March 6, 1967.

37. The order and judgment of the court of May 2, 1967.

38. The motion filed by plaintiff to relieve it from the judgment of the court by allowing it to amend.

39. The order of the court on plaintiff's motion to relieve it from the judgment of the court by allowing it to amend.

40. All depositions, interrogatories, and answers thereto, and requests for admission and answers thereto.

All other pleadings, evidence and motions and the rulings, orders and judgments on said pleadings, evidence and motions.

Paul W. Brock

Paul W. Brock

CERTIFICATE OF SERVICE

I hereby certify that I have mailed a true and correct copy of the foregoing pleading to James Armstrong Walters, Esq., Attorney for Arlena L. Smith, Bobbie L. McMullen and Betty L. Goldie; M. B. Montgomery, Esq.; Jack H. Young, Esq., Attorney for Grover Cleveland Harrison, Sojourner Motor Fleet, Inc., National Association for the Advancement of Colored People, Southern Christian Leadership Conference, Student Non-Violent Co-ordinating Committee; Howard Moore, Jr., Esq., Attorney for Grover Cleveland Harrison, Sojourner Motor Fleet, Inc., and Student Non-Violent Co-ordinating Committee; Barbara A. Morris and Robert L. Carter, Esq., Attorneys for National Association for the Advancement of Colored People; Melvin Zarr, Esq., Attorney for Southern Christian Leadership Conference; Jess Brown, Esq., Attorney for Congress of Racial Equality; Alvin J. Bronstein, Esq., Attorney for Congress of Racial Equality; Carl Rachlin, Esq., Attorney for Congress of Racial Equality; Benjamin E. Smith, Esq., Attorney for Council of Federated Organizations; Eddie H. Tucker, Esq., Attorney for Grover Cleveland Harrison, Sojourner Motor Fleet, Inc. and Student Non-Violent Co-ordinating Committee; and Dave Dennis, Robert Moses, Bob Weil and Emily Gordon, by depositing a copy of same in the United States mail, postage prepaid, addressed to the above parties on this, the 17th day of June, 1967.

Paul Brock

Dear Sirs: Rend

If your address which we are presently using is not your correct mailing address, it would be appreciated in the interest of convenience and expediency if you would furnish us with your present mailing address.

Harold D. Parkman

Smith v Harrison

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

No. _____

AMERICAN LIBERTY INSURANCE COMPANY,

Appellant,

versus

ARLENA L. SMITH, ET AL.,

Appellees.

MOTION FOR EXTENSION OF TIME

Comes now the Appellant in the above-entitled case, through Paul W. Brock, its attorney of record, and moves that this Honorable Court enter an order extending the return date on or before which Appellant is required to withdraw the record for reproduction or file a designation of portions of the record for reproduction from June 25, 1967, to July 25, 1967, and as grounds therefor states that the additional time requested is necessary so that Appellant may thoroughly examine the record in this case (consisting of approximately 640 pages) in order to determine what portions shall be designated for reproduction.

WHEREFORE, Appellant moves this Honorable Court to enter an order extending the time for the designation

or withdrawal of the record from June 25, 1967, to July 25, 1967.

Paul W. Brock

Paul W. Brock
Attorney for Appellant
First National Bank Building
Mobile, Alabama 36601

CERTIFICATE OF SERVICE

I hereby certify that I have mailed a true and correct copy of the foregoing motion to:

James Armstrong Walters, Esq., and M. B. Montgomery, Esq., Attorneys for Arlena L. Smith, Bobbie L. McMullen and Betty L. Goldie;

Jack H. Young, Esq., Attorney for Grover Cleveland Harrison, Sojourner Motor Fleet, Inc., National Association for the Advancement of Colored People, Southern Christian Leadership Conference, and Student Non-Violent Co-ordinating Committee;

Howard Moore, Jr., Esq., Attorney for Grover Cleveland Harrison, Sojourner Motor Fleet, Inc., and Student Non-Violent Co-ordinating Committee;

Barbara A. Morris and Robert L. Carter, Esq., Attorneys for National Association for the Advancement of Colored People;

Melvyn Zarr, Esq., Attorney for Southern Christian Leadership Conference;

Jess Brown, Esq., Attorney for Congress of Racial Equality;

Alvin J. Bronstein, Esq., Attorney for Congress of Racial Equality;

Carl Rachlin, Esq., Attorney for Congress of Racial Equality;

Benjamin E. Smith, Esq., Attorney for Council of Federated Organizations;

Eddie H. Tucker, Esq., Attorney for Grover Cleveland Harrison, Sojourner Motor Fleet, Inc., and Student Non-Violent Co-ordinating Committee; and

Council of Federated Organizations, c/o Dave Dennis, Robert Moses, Bob Weil and Emily Gordon,

by depositing a copy of same in the United States mail, postage prepaid, addressed to the above parties on this, the 21 day of June, 1967.

Paul W. Brock

File
Smith v Harrison

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

No. 24926

AMERICAN LIBERTY INSURANCE COMPANY,

Appellant,

versus

ARLENA L. SMITH, ET AL.,

Appellees.

MOTION FOR INJUNCTION AND STAY OF PROCEEDINGS
PENDING APPEAL

TO THE HONORABLE THE JUDGES OF THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT:

Comes now American Liberty Insurance Company, Appellant in the above-styled cause and files this, its motion for injunction and stay of proceedings, and respectfully shows unto the Court as follows:

1. That on February 16, 1965, a complaint was filed in the United States District Court for the Southern District of Mississippi, Southern Division, Case No. 3018(S)(C), styled Arlena L. Smith, Bobbie L. McMullen, and Betty L. Goldy, Plaintiffs, v. Grover Cleveland Harrison, Student Non-Violent Coordinating Committee, National Association for the Advancement of Colored People, Southern Christian Leadership Conference, Congress of Racial Equality, and Council of Federated

Organizations. A copy of the said complaint is marked Exhibit "A" and attached hereto. The complaint alleges that plaintiffs' father and mother were fatally injured as a result of a collision on November 19, 1964, with an automobile being operated by defendant Grover Cleveland Harrison, and that Grover Cleveland Harrison was at the time of such collision acting within the scope of his employment as transportation officer for the other named defendants. Plaintiffs further allege that the deaths of their father and mother were the proximate result of the negligence of Grover Cleveland Harrison, et al., and plaintiffs demand judgment in the total amount of $1,500,000.00, plus interest and costs. Jurisdiction was based upon diversity of citizenship. For convenience, this lawsuit shall hereinafter be referred to as the "death action."

2. On April 7, 1965, Appellant filed in the United States District Court for the Southern District of Mississippi, Southern Division, its complaint for declaratory judgment, styled American Liberty Insurance Company, a corporation, Plaintiff v. Arlena L. Smith, Bobbie L. McMullen, Betty L. Goldy, Grover Cleveland Harrison, Sojourner Motor Fleet, Inc., Student Non-Violent Coordinating Committee, National Association for the Advancement of Colored People, Southern Christian Leadership Conference, Congress of Racial Equality and Council of Federated Organizations, Defendants, which was designated Civil Action No. 3040(S)(C).

A copy of said complaint is marked Exhibit "B", attached hereto and made a part hereof by reference as if fully set out herein. For convenience, this lawsuit shall hereinafter be referred to as the "declaratory judgment action." The averments of the complaint show that Appellant had issued to Sojourner Motor Fleet, Inc., a policy of liability insurance on or about, to-wit, September 21, 1964, and that the defendants in the death action contend that Appellant is obligated to furnish them coverage and defense in the death action pursuant to said policy of insurance, but Appellant has refused to extend any coverage or to defend said suit for reasons stated in said complaint for declaratory judgment. The applicable limits of liability under said policy of insurance are $10,000.00 for personal injury or death of one person, and $20,000.00 for all personal injuries or deaths arising out of one accident. Jurisdiction of this suit was also based upon diversity of citizenship.

3. After the filing of the complaint in the declaratory judgment action, the following pleadings were filed by the respective defendants:

(a) On May 3, 1965, Congress of Racial Equality filed an answer denying generally the allegations of the complaint and also objecting to the venue of the action as to it (Exhibit "C").

(b) On May 4, 1965, Sojourner Motor Fleet, Inc.,

filed its answer without objecting to venue (Exhibit "D").

(c) On May 4, 1965, Grover Cleveland Harrison filed his answer without objecting to venue (Exhibit "E").

(d) On May 4, 1965, National Association for the Advancement of Colored People filed its answer without objecting to venue (Exhibit "F").

(e) On May 4, 1965, Student Non-Violent Coordinating Committee filed its answer without objecting to venue (Exhibit "G").

(f) On May 4, 1965, Southern Christian Leadership Conference filed a motion to dismiss, raising the question of improper venue as to it (Exhibit "H").

(g) On May 21, 1965, defendants Arlena L. Smith, Bobbie L. McMullen and Betty L. Goldy filed their answer without objecting to venue (Exhibit "I").

(h) On August 31, 1965, Council of Federated Organizations filed a motion to dismiss on the basis that it is a non-suable entity, but without objecting to venue (Exhibit "J").

(i) On November 12, 1965, Grover Cleveland Harrison, Student Non-Violent Coordinating Committee and Sojourner Motor Fleet, Inc., filed a motion to dismiss the complaint (Exhibit "K") on the ground of lack

of diversity of citizenship between Appellant (an Alabama corporation with its principal place of business in Alabama) and defendant Grover Cleveland Harrison (alleged to be a citizen of Alabama).

(j) On November 30, 1965, Grover Cleveland Harrison, Sojourner Motor Fleet, Inc., and Student Non-Violent Coordinating Committee filed an amendment to their motion to dismiss, alleging further that the defendant Student Non-Violent Coordinating Committee is an unincorporated association with members and officers who are citizens of the State of Alabama, the same state of residence of Appellant. Attached to such amendment were an affidavit and certificate of search from the Secretary of State of the State of Georgia (Exhibit "L").

(k) On December 3, 1965, the district court entered an order permitting Appellant, Grover Cleveland Harrison, Sojourner Motor Fleet, Inc., and Student Non-Violent Coordinating Committee leave to file affidavits and counter-affidavits in support of or in opposition to the aforesaid motion to dismiss (Exhibit "M").

4. During the period from May, 1965, through November, 1965, Appellant proceeded with due diligence and dispatch in preparing the declaratory judgment action for trial. During the months of August and September, 1965, counsel for Appellant went to Atlanta, Georgia, and took the depositions of Randolph T.

Blackwell, Constancia Romilly, Clyde L. Woolen, Jr., Elizabeth R. Garmen, Doyal J. Brown, Jr., J. A. Perkerson, Betty Sue Carney, Fredric B. Schultz, Joy Guyton Deese, and W. G. Stevens, Jr. Counsel for Appellant took the deposition of Grover Cleveland Harrison in Biloxi, Mississippi, in September, 1965. In all, over 400 pages of testimony was transcribed during the aforesaid depositions. Additionally, Appellant propounded interrogatories to Council of Federated Organizations and Sojourner Motor Fleet, Inc., and filed requests for admissions from Congress of Racial Equality and Sojourner Motor Fleet, Inc.

5. On February 17, 1966, a judgment was entered by the district court dismissing the case for lack of jurisdiction (Exhibit "N"). In the supporting memorandum filed with the judgment, the district court found as a matter of fact that the residence of Grover Cleveland Harrison was Atlanta, Georgia, and not Yantley, Alabama. However, the district court stated that, "upon a careful examination of this entire file, it is not made apparent that this Court has any jurisdiction of this case. The plaintiff is a resident of Alabama. The defendants certainly do not all live in Mississippi. Yet, a suit cannot be maintained in this Court on diversity jurisdiction unless either all of the plaintiffs or all of the defendants reside in Mississippi. That venue requirement is jurisdictional." The supporting memorandum is marked Exhibit "O" and

attached hereto. Said judgment did not grant Appellant leave to amend the complaint.

6. On February 25, 1966, Appellant filed a timely motion to reconsider, asking the district court to vacate and set aside the judgment dismissing the case and to permit Appellant to amend the complaint by striking any defendant as to which venue would be improper and which defendant had not waived its right to object to venue. A copy of said motion is marked Exhibit "P" and attached hereto. Thereafter a hearing was held on said motion and the matter was taken under submission by the district court. Written briefs were also submitted and, on May 2, 1967, the district court entered an order overruling Appellant's motion to reconsider (Exhibit "Q"), apparently on the additional ground that there is not complete diversity of citizenship between the Alabama plaintiff (Appellant) and "the voluntary associations who have members in Alabama," and on the ground that Appellant has "no vested right to maintain a suit of this nature here" since "fairness to all parties in interest indicates the necessity for a trial of the projected issues in a regular suit wherein no possible prejudice may intervene or cast its influence." Again, the district court failed to grant Appellant leave to amend the complaint.

7. Although the time for the taking of an appeal had now commenced to run from the judgment of May 2, 1967, Appellant filed a motion (Exhibit "R") asking the

district court to relieve it from the judgments of February 17, 1966, and May 2, 1967, by amending same to grant plaintiff (Appellant) leave to file an amended complaint by dismissing any party defendant as to which venue would be improper (assuming said defendant had not waived its right to object to venue); by dismissing Student Non-Violent Coordinating Committee as a party defendant and any other voluntary association which had shown that it has members resident in the State of Alabama; and by joining as parties defendant certain residents of the State of Mississippi, being members of Student Non-Violent Coordinating Committee and representative parties on its behalf. This motion was noticed for hearing on June 1, 1967, and counsel for Appellant sought to present same to the district court on that day in the judge's offices in Jackson, Mississippi. However, the motion was not heard and consequently Appellant filed its notice of appeal on that day (Exhibit "S"). The appeal of the declaratory judgment action is presently pending in this Court.

8. The death action has now been set for trial for July 10, 1967.

9. Appellant avers that the district court committed reversible error in entering its order of February 17, 1966, dismissing the suit for lack of jurisdiction on the ground of improper venue, for the reason that jurisdiction was proper since there was the necessary diversity of citizenship between Appellant

and parties defendant, and for the reason that venue of the action is proper as to all defendants except Congress of Racial Equality and Southern Christian Leadership Conference, being the only two defendants who have raised objection to venue; and Appellant avers that the district court committed further error by failing to grant Appellant leave to amend its complaint by striking Congress of Racial Equality and Southern Christian Leadership Conference.

10. Appellant avers that the district court committed reversible error in entering its order of May 2, 1967, by denying Appellant's motion to reconsider and failing to grant Appellant leave to amend its complaint by striking Student Non-Violent Coordinating Committee as a party defendant. Appellant further avers that the district court erred in its finding in said order of May 2, 1967, that the projected issues can be tried in the death action, for the reason that the issues in the death action are not the same as the issues in the declaratory judgment action.

11. Appellant avers that if it should be ultimately determined in the declaratory judgment action that Appellant is required to defend such death action and to afford coverage under its aforesaid policy, which Appellant denies, Appellant would have the right under the provisions thereof to maintain a defense of certain of said defendants as to the death action, and that if

said death action is allowed to proceed to trial on July 10, 1967, prior to the determination of coverage sought herein, then Appellant will be irreparably damaged and injured in that it will not have been afforded the opportunity of defending said suit, of attempting to settle the same or of taking any other appropriate action for the benefit of its interest and the interest of such defendants. In the event a judgment is rendered in the death action for the plaintiffs, in excess of the limits of the policy of insurance of Appellant, Appellant may be subjected to additional litigation claiming liability in excess of the limits of coverage stated in its policy.

The declaratory judgment action was timely filed, and the determination of the issues therein, prior to the trial of the death action, is mandatory, so that Appellant's rights, obligations and duties may be effectively preserved from irreparable harm.

12. The issue of insurance coverage under Appellant's policy must ultimately be determined. A judicial determination of this issue, prior to the trial of the death action, would not prejudice the plaintiffs in that action, but may well work an irreparable injury to Appellant.

WHEREFORE, the premises considered, Appellant moves this Court to issue an order enjoining, restraining or staying the further prosecution of said Civil Action

No. 3018(S)(C) (death action) during the pendency of this appeal and until a final determination shall have been made of the issues presented in said Civil Action No. 3040(S)(C) (declaratory judgment action), and Appellant moves the Court for such other, further and different relief to which it may be entitled, the premises considered.

Appellant respectfully requests that it be permitted the opportunity of presenting this petition to the Court orally.

Respectfully submitted,

Paul W. Brock

Paul W. Brock
Attorney for Appellant
First National Bank Bldg.
Mobile, Alabama 36601

CERTIFICATE OF SERVICE

I hereby certify that I have mailed a true and correct copy of the foregoing motion to:

James Armstrong Walters, Esq., and M. B. Montgomery, Esq., Attorneys for Arlena L. Smith, Bobbie L. McMullen and Betty L. Goldie;

Jack H. Young, Esq., Attorney for Grover Cleveland Harrison, Sojourner Motor Fleet, Inc., National Association for the Advancement of Colored People, Southern Christian Leadership Conference, and Student Non-Violent Coordinating Committee;

Howard Moore, Jr., Esq., Attorney for Grover Cleveland Harrison, Sojourner Motor Fleet, Inc., and Student Non-Violent Coordinating Committee;

Barbara A. Morris and Robert L. Carter, Esq., Attorneys for National Association for the Advancement of Colored People;

Melvyn Zarr, Esq., Attorney for Southern Christian Leadership Conference;

Jess Brown, Esq., Attorney for Congress of Racial Equality;

Alvin J. Bronstein, Esq., Attorney for Congress of Racial Equality;

Carl Rachlin, Esq., Attorney for Congress of Racial Equality;

Benjamin E. Smith, Esq., Attorney for Council of Federated Organizations;

Eddie H. Tucker, Esq., Attorney for Grover Cleveland Harrison, Sojourner Motor Fleet, Inc., and Student Non-Violent Coordinating Committee; and

Council of Federated Organizations, c/o Dave Dennis, Robert Moses, Bob Weil and Emily Gordon,

by depositing a copy of same in the United States mail, postage prepaid, addressed to the above parties on this, the 23d day of June, 1967.

Paul W. Brock

UNITED STATES COURT OF APPEALS

FIFTH CIRCUIT

NO. 24,926

AMERICAN LIBERTY INSURANCE COMPANY	X	APPELLANT
VS:	X	
ARLENA L. SMITH, ET AL	X	APPELLEES

REPLY TO APPELLANT'S MOTION
FOR INJUNCTION AND STAY OF
PROCEEDINGS PENDING APPEAL

Arlena L. Smith, et al., through their Attorneys of Record, present this their reply to the Motion of American Liberty Insurance Company, Plaintiff below, Appellant here, for an injunction to stay the proceedings pending trial in another and wholly independent case, Arlena L. Smith, et al., vs. Grover Cleveland Harrison, et al., that is still pending in the District Court of Mississippi, Southern District, Bilozi Division, in which no appeal has been taken to this Court and over which this Court has no jurisdiction.

The case now on appeal to this Court and of which this Court has appellate jurisdiction is, as shown by the above style of this case, "American Liberty Insurance Company vs. Arlena L. Smith, et al., and bore Number Civil Action No. 3040 (S) (C)" in the District Court while the cause,

in which they desire to enjoin and stay the proceedings, is entitled "Arlena L. Smith, Bobbie L. McMullen and Betty L. Goldy vs. Grover Cleveland Harrison, Student Non-Violent Coordinating Committee, National Association for the Advancement of Colored People, Southern Christian Leadership Conference, Council of Racial Equality and Council of Federated Organizations, Numbered 3018 (S) (C) on the docket for the United States District Court of Mississippi, Southern District, Biloxi Division, where it is now a pending cause.

The Movant, American Liberty Insurance Company, is not even a party to the cause that they seek to enjoin the proceedings in. All jurisdiction thereof is in the United States District Court of Mississippi, Southern District, Biloxi Division, and no other Court has any jurisdiction whatsoever over that proceeding.

The United States Court of Appeals for the Fifth Circuit has only appellate jurisdiction. Its jurisdiction is fixed by statute.

Title 28, Section 1291, provides:--

> "The Courts of Appeals shall have jurisdiction of appeals from all final decisions of the District Courts of the United States * * * *, except where a direct review may be had in Supreme Court * * *"

Title 28, Section 1292, provides for jurisdiction in interlocutory decisions.

However, nowhere is there any statute giving the Court of Appeals jurisdiction over a civil cause that is pending undecided in a United States District Court where there has been and is no decision to appeal from to this Court and no appeal has been taken to this Court.

In Pollard vs. Supreme Court of Michigan, C. A. Mich. 1964, 334 Fed. 2d 129, one J. W. Pollard filed an original action in the United States Court of Appeals (6th Cir.) for a writ of mandamus compelling the State Supreme Court to promptly determine state legislature apportionment plan following failure of Legislative Apportionment Committee to act on it. The Court of Appeals held that it had only appellate jurisdiction and did not have original jurisdiction of the action, under Title 28 U. S. C., Section 1291, 1292, nor the all writs statute Section 1651.

In Hullom vs. Ziel, 266 Fed. 2d 546, the United States Court of Appeals (6th Cir.) held that its jurisdiction to issue writs under the all writs statute, Title 28 U. S. C., Section 1651, is restricted to those cases in which the writ is in aid of its appellate jurisdiction.

It is quite clear that this Court has no appellate jurisdiction to enjoin or stay proceedings here, in a case where it is still pending on the District Court Docket, has not been tried, and no appealable order has been entered therein from which an appeal has or could be taken.

In Schilling et al vs. Schuritzer-Cummins Co., 142 Fed. 2d 82, the Court of Appeals District of Columbia held it is not the function of an appellate court to assume the powers of the District Court.

The cause of Arlena L. Smith, Bobbie L. McMullen and Betty L. Goldy vs. Grover Cleveland Harrison, et al., to which Movant here, American Liberty Insurance Company, is not even a party but proceedings which are sought to be enjoined or stayed by writ from this Appellate Court by motion made in this entirely separate and different case that is here on appeal, simply does not invoke any jurisdiction in this Court so to do.

American Liberty Insurance Company vs. Arlena L. Smith, et al., No. 3040 (S) (C) on the General Docket of the District Court has been appealed and the Motion before the Court here is made in that case. By it they seek to enjoin and stay the proceedings in an entirely different case (Arlena L. Smith et al., vs. Grover Cleveland Harrison, et al., No. 3018 (S)(C) on the General Docket of the District Court where it is still pending untried and has not been appealed.

We submit that this Appellate Court has no jurisdiction to enjoin and stay proceedings therein. The District Court has exclusive jurisdiction.

We submit respectfully and with deference that the

Motion must be overruled and the grant of injunction or stay be denied.

Respectfully submitted,

JAMES A. WALTERS
Attorney at Law
519 2nd Avenue North
Columbus, Mississippi

M. B. Montgomery
315-21 Barnett Building
Jackson, Mississippi

ATTORNEYS FOR APPELLEES,
Arlena L. Smith, Bobbie L.
McMullen and Betty L. Goldy

BARNETT, MONTGOMERY, McCLINTOCK
& CUNNINGHAM
315-21 Barnett Building
P. O. Box 1288
Jackson, Mississippi

CERTIFICATE OF SERVICE

I, M. B. Montgomery, of Counsel for the Appellees herein hereby certify that I have mailed a true and correct copy of the foregoing Reply to Appellant's Motion For Injunction and Stay of Proceedings Pending Appeal to:

Grover Cleveland Harrison
% Jack H. Young
Attorney at Law
115-1/2 North Farish Street
Jackson, Mississippi

and

c/o Howard Moore, Jr.
Attorney at Law
859-1/2 Hunter Street, N. W.
Atlanta, Georgia

Sojourner Motor Fleet, Inc.
% Jack H. Young
Attorney at Law
115-1/2 North Farish Street
Jackson, Mississippi

and

c/o Howard Moore, Jr.
Attorney at Law
859-1/2 Hunter Street, N. W.
Atlanta, Georgia

National Association for the Advancement
of Colored People
c/o Jack H. Young
Attorney at Law
115-1/2 North Farish Street
Jackson, Mississippi

and

c/o Barbara A.Morris
and Robert L. Carter
Attorneys at Law
20 West 40th Street
New York, New York

Southern Christian Leadership Conference
c/o Jack H. Young
Attorney at Law
115-1/2 North Farish Street
Jackson, Mississippi

and

c/o Melvin Zarr
10 Columbus Circle
New York, New York 10019

Student Non-Violent Co-ordinating Committee
c/o Jack H. Young
Attorney at Law
115-1/2 North Farish Street
Jackson, Mississippi

and

c/o Howard Moore, Jr.
Attorney at Law
859-1/2 Hunter Street, N. W.
Atlanta, Georgia

Congress of Racial Equality
c/o Jess Brown
Attorney at Law
125-1/2 North Farish Street
Jackson, Mississippi

and c/o Alvin J. Bronstein
Attorney at Law
602 North Farish Street
Jackson, Mississippi

and

c/o Carl Rachlin
Attorney at Law
38 Park Row
New York, New York

Council of Federated Organizations
38 Park Row
New York, New York
and
c/o Benjamin E. Smith
Attorney at Law
1006 Baronne Building
New Orleans, Louisiana

and Dave Dennis, Robert Moses, Bob Weil,
and Emily Grodon
1017 Lynch Street
Jackson, Mississippi

Eddie H. Tucker
Attorney at Law
115-1/2 North Farish Street
Jackson, Mississippi
Attorney for Grover Cleveland Harrison, Sojourner Motor Fleet, Inc. and Student Non-Violent Coordinating Committee.

Southern Christian Leadership Conference
c/o Melvyn L. Zarr
Attorney at Law
10 Columbus Circle
New York, N. Y.

Hand, Arendall, Bedsole, Greaves
& Johnston
First National Bldg.
Mobile, Ala.

and

Morse and Morse
Hatten Building
Gulfport, Mississippi

by depositing a copy of same in the United States mail, postage prepaid, addressed to the above parties on this June 30 1967.

M. B. Montgomery

M. B. Montgomery

Smith v Harrison

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

NO. 24926

AMERICAN LIBERTY INSURANCE COMPANY,

Appellant,

versus

ARLENA L. SMITH, ET AL.,

Appellees.

DESIGNATION OF RECORD ON APPEAL

Appellant, American Liberty Insurance Company, designates the complete record and all of the proceedings and evidence in this action to be contained in the record on appeal, except, however, all depositions filed in the cause, including, without limitation, the depositions of the following individuals: Randolph T. Blackwell, Constancia Romilly, Clyde L. Woolen, Jr., Elizabeth R. Garmen, Doyal J. Brown, Jr., J. A. Perkerson, Betty Sue Carney, Fredric B. Schultz, Joy Guyton Deese, W. G. Stevens, Jr., and Grover Cleveland Harrison.

Paul W. Brock

Paul W. Brock
Attorney for Appellant
First National Bank Building
Mobile, Alabama 36601

CERTIFICATE OF SERVICE

I hereby certify that I have mailed a true and correct copy of the foregoing Designation of Record on Appeal to:

James A. Walters, Esq., Attorney for Arlena L. Smith, Bobbie L. McMullen and Betty L. Goldy;

M. B. Montgomery, Esq., Attorney for Arlena L. Smith, Bobbie L. McMullen and Betty L. Goldy;

Howard Moore, Jr., Esq., Attorney for Grover Cleveland Harrison, Sojourner Motor Fleet, Inc., and Student Non-Violent Coordinating Committee;

Eddie H. Tucker, Esq., Attorney for Grover Cleveland Harrison, Sojourner Motor Fleet, Inc., and Student Non-Violent Coordinating Committee;

Jack H. Young, Esq., Attorney for National Association for the Advancement of Colored People and Southern Christian Leadership Conference;

Barbara A. Morris and Robert L. Carter, Esq., Attorneys for National Association for the Advancement of Colored People;

Melvyn Zarr, Esq., Attorney for Southern Christian Leadership Conference;

R. Jess Brown, Esq., Attorney for Congress of Racial Equality;

Alvin J. Bronstein, Esq., Attorney for Congress of Racial Equality;

Carl Rachlin, Esq., Attorney for Congress of Racial Equality;

L. H. Rosenthal, Esq., Attorney for Council of Federated Organizations; and

Benjamin E. Smith, Esq., Attorney for Council of Federated Organizations,

by depositing a copy of same in the United States mail, postage prepaid, addressed to the above parties on this, the 20th day of July, 1967.

Paul W. Brock

Smith v Harrison

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

NO. 24926

AMERICAN LIBERTY INSURANCE COMPANY,

Appellant,

versus

ARLENA L. SMITH, ET AL.,

Appellees.

BRIEF IN SUPPORT OF MOTION FOR INJUNCTION
AND STAY OF PROCEEDINGS PENDING APPEAL.

This case is on appeal from orders issued by the Judge of the United States District Court for the Southern District of Mississippi dismissing the bill for declaratory judgment filed by Appellant in the District Court, naming as defendants therein all parties to a suit for damages filed in the same District Court. As Appellant's

motion shows, the defendants in the damage suit (hereinafter referred to as the "Death Action") contend that Appellant is obligated to furnish them coverage and defense in the Death Action pursuant to a policy of insurance issued to Sojourner Motor Fleet, Inc., the owner of a vehicle involved in the automobile accident out of which the Death Action arose. In the declaratory judgment action, Appellant seeks a declaration that it is under no obligation to afford coverage or defense under its policy to any of the defendants in the Death Action, for reasons more particularly set forth in the bill of complaint.

The appeal of the declaratory judgment action has been timely taken by the filing of the notice of appeal on June 1, 1967. Counsel for Appellant has entered his appearance, the filing fee has been paid, and Appellant has now filed its designation of the record for reproduction. Begging the question of a counter-designation being filed by any of the Appellees, it will be at least

40 days before the record on appeal will be prepared so that briefs may be filed on the merits of the appeal. In the meantime (and during the pendency of this appeal), the Death Action apparently will remain on the trial docket of the District Court and will presumably be set for trial at some date within the near future. In fact, the Death Action had been set for July 10, 1967, but was continued at the request of plaintiffs therein. It is for this reason that Appellant respectfully requests that the Court at this time entertain the present motion filed herein and grant Appellant the relief requested in said motion.

Basically, Appellant is proceeding pursuant to the provisions of Title 28, U.S.C.A. §1651(a), which states as follows:

> "The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law."

We submit that the present matter falls within the purview of §1651, and that this Court has the right and authority to consider the present motion. As stated, the case presently on appeal is a companion case to the Death Action. Both actions were filed in the same Court and, prior to this appeal, were pending on the trial docket of the same Judge, The Honorable Harold Cox. Except for Appellant (and the named insured, Sojourner Motor Fleet, Inc.), all parties to this appeal are named parties in the Death Action, and Appellant, while not a named party in the Death Action, has an actual, real and substantial interest in the outcome of the Death Action, as is shown by the allegations of the complaint filed in the declaratory judgment action.

While the two cases may be independent in the sense that each states a claim or cause of action raising issues separate from the other, they are nevertheless dependent upon one another for the reason that all the parties to both actions will be directly affected by the

outcome of both cases. Should plaintiffs in the Death Action fail to obtain a judgment, then the declaratory judgment action need proceed no further, since the issues therein as to coverage will become moot. On the other hand, should plaintiffs in the Death Action obtain a judgment, then they will be directly affected by the outcome of the declaratory judgment action. Should Appellant prevail in the declaratory judgment action, then it need not concern itself with the outcome of the Death Action. On the other hand, should Appellant not prevail in the declaratory judgment action, its interests would be directly affected by the outcome of the Death Action.

If the declaratory judgment action were still within the jurisdiction of the District Court, then Appellant could make this motion to the District Judge, as it has in fact done previously, inasmuch as both cases would have been pending in the same Court and on the same Judge's trial docket, and all the parties to the Death

Action are also parties to the declaratory judgment action. However, now that the declaratory judgment action is on appeal to this Court, the District Court has lost jurisdiction in the matter, and Appellant has therefore made this motion to this Court asking it to invoke its authority to stay the Death Action.

The cases cited by Mr. Montgomery in his reply to Appellant's motion are not in point and do not support his position that this Court has no jurisdiction to entertain the motion. In Hullom v. Ziel, 266 F.2d 546 (6 Cir. 1959), plaintiff instituted an original proceeding in the Court of Appeals for a writ of mandamus against the Clerk of the District Court. No appeal had been filed in that case or in any related case. Hence, the statement of the Court that its jurisdiction to issue a writ of mandamus under the provisions of 1651(a) is restricted to those cases in which the writ is an aid of that jurisdiction. Pollard v. Supreme Court of Michigan, 334 F.2d 129 (6 Cir. 1964), also was an original

action filed in the Court of Appeals and further, sought to compel a state court to take certain action desired by the plaintiff. In neither of these actions was an appeal then pending in the Appellate Court. Such is not the case here. Schilling v. Schwitzer-Cummins Co., 142 F.2d 82 (D.C. Cir. 1944), is inapplicable to this case both as to the facts and the law.

The mere fact that the relief sought under Section 1651 is the stay of proceedings of another tribunal does not, in and of itself, negate the court's power to grant the relief under this section. See Public Utilities Commission of Ohio v. United Fuel Gas Co., 317 U.S. 456 (1943); and City of Fresno v. Edmonston, 131 F.Supp. 421 (D.C. Cal. 1955). Furthermore, this Court certainly has the power under Section 1651 to enjoin actions of the parties themselves during the pendency of the appeal. See Stell v. Savannah-Chatham County Board of Education, 318 F.2d 425 (5 Cir. 1963); United States v. Lynd, 301 F.2d 818 (5 Cir. 1962); and Davis v. Board of School

Commissioners of Mobile County, Alabama, 322 F.2d 356 (5 Cir. 1963). And in some instances parties have been enjoined from instituting legal proceedings. See Clinton v. United States, 297 F.2d 899 (9 Cir. 1961); and National Labor Relations Board v. Underwood Machinery Co., 198 F.2d 93 (1 Cir. 1952). And courts of appeals have issued temporary injunctions to preserve the status quo pending the appeal. Public Utilities Commission of District of Columbia v. Capital Transit Co., 214 F.2d 242 (D.C. Cir. 1954).

We respectfully submit that Appellant has shown in its motion that it may suffer irreparable harm in the event that the Death Action proceeds to trial and plaintiffs obtain a judgment in that action prior to a determination of the questions presented in the declaratory judgment action. As shown in said motion, plaintiffs in the Death Action are demanding judgment in the amount of $1,500,000.00. The motion also shows that the applicable limits of liability under Appellant's policy

are $10,000.00 for personal injury or death of one person, and $20,000.00 for all personal injuries or deaths arising out of one accident. Due to the particular circumstances of the accident (plaintiffs' mother and father were fatally injured in the head-on collision), and due to the particular activities of the named defendants, it is conceivable that the amount of any judgment rendered in the Death Action in Mississippi would be substantially in excess of the applicable limits of the insurance policy. In the event such an excess judgment is rendered in the Death Action prior to the determination of the issues of defense and coverage in the declaratory judgment action, then Appellant will face a very real possibility of being subjected to additional litigation claiming liability in excess of the limits of coverage stated in its policy.

As to the merits of the appeal, Appellant avers in its motion that the District Court committed reversible error in entering its order of February 17, 1966,

dismissing the suit for lack of jurisdiction on the ground of improper venue. The exhibits to the motion show that the jurisdiction was proper, since there was the necessary diversity of citizenship between Appellant and all parties defendant, and that venue of the action is proper as to all defendants except Congress of Racial Equality and Southern Christian Leadership Conference, being the only two defendants who have raised objection to venue. In its order of February 17, 1966, the District Court undoubtedly confused jurisdiction with venue. This Court succinctly distinguished the doctrines of jurisdiction and venue in Brown v. Pyle, 310 F.2d 95 (5 Cir. 1962), in the following statement:

> "Jurisdiction is not to be confused with venue. Jurisdiction is the power to hear and determine a cause--the power to adjudicate. The court below had this power in that there was a complete diversity of parties coupled with the necessary amount involved. Venue is the place where that power may be exercised. In diversity cases, venue is controlled by 28 U.S.C.A. § 1391 (a). It provides that 'a civil action wherein jurisdiction is founded

> only on diversity of citizenship may * * * be brought only in the judicial district where all plaintiffs or all defendants reside.'
>
> This does not mean that the federal court does not have the power to adjudicate the matter. Rather, it confers a personal privilege on the parties which can be expressly waived or impliedly waived by conduct."

The right to object to improper venue is only a waivable defense, and may be waived by failure to object thereto within 20 days after service of the summons and complaint. See Rule 12(b) and (h) of the Federal Rules of Civil Procedure. As stated, only Congress of Racial Equality and Southern Christian Leadership Conference raised objection to the venue.

Furthermore, venue is a defense personal to each defendant and a defendant who has waived objections to venue as to himself cannot take advantage of an objection to venue filed by a co-defendant. Vance Trucking Co. v. Canal Insurance Co., 338 F.2d 943 (4 Cir. 1964); and O'Brien v. Weber, 137 F.Supp. 684 (D.C. Pa. 1955).

No hearing was ever held on the motions filed by the two defendants who objected to the venue. But even assuming that their motions should have been sustained without hearing, the proper course for the District Court to take would have been to dismiss the complaint granting plaintiff leave to amend by striking Congress of Racial Equality and Southern Christian Leadership Conference as defendants.

On February 25, 1966, Appellant filed a timely motion to reconsider, asking the District Court to set aside the judgment and permit Appellant to amend the complaint by striking any defendant as to which venue would be improper and which defendant had not waived its right to object to venue. After a hearing was held on said motion and after briefs were submitted, the District Court took the matter under submission and on May 2, 1967, entered an order overruling Appellant's motion to reconsider, apparently on the additional ground that there is not complete diversity of citizenship

between Appellant (an Alabama corporation) and "the voluntary associations who have members in Alabama," and on the ground that Appellant has "no vested right to maintain a suit of this nature here" since "fairness to all parties in interest indicates the necessity for a trial of the projected issues in a regular suit wherein no possible prejudice may intervene or cast influence." Assuming that these are the reasons for the District Court's denial of the motion to reconsider, then the District Court erred in its aforesaid order of May 2, 1967, for the reason that Appellant should have been given leave to amend its complaint by dismissing Student Non-Violent Coordinating Committee as a defendant (which is the only defendant who objected to jurisdiction and offered proof that it is a voluntary association with members resident in the State of Alabama). It is well settled that a non-indispensable party may be dismissed from the action in order to perfect federal diversity jurisdiction. Hunt Tool Co. v. Moore, Inc., 212 F.2d 685 (5 Cir. 1954); and Grant County Deposit Bank v.

McCampbell, 194 F.2d 469 (6 Cir. 1952). In view of the liberality in pleading and the free power of amendment given by the Federal Rules of Civil Procedure, the District Court erred in failing to grant Appellant leave to amend the complaint. Downey v. Palmer, 114 F.2d 116 (2 Cir. 1940); and Dowdy v. Procter & Gamble Manufacturing Company, 267 F.2d 827 (5 Cir. 1959); and cases cited therein.

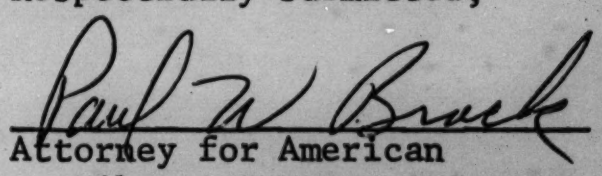
It is difficult to ascertain the exact basis for the second ground of the May 2, 1967, order of the District Court. However, the District Court is presumably referring to the rule of discretion in granting or refusing the remedy of declaratory judgment, where another case is pending concerning the same issues. Such is not the case here. As shown in Appellant's motion, the issues in the Death Action are whether or not defendants are liable to plaintiffs for the death of plaintiffs' parents arising out of the aforesaid automobile accident. The issue in the declaratory judgment action is whether

or not Appellant is obligated to afford coverage to some of the defendants in the Death Action under the aforesaid insurance policy. The liability (or the lack thereof) of defendants in the Death Action to the plaintiffs in the Death Action is not at issue in the declaratory judgment action. In such case, it is error for a court to refuse to entertain a declaratory judgment seeking to determine the coverage question. Maryland Casualty Co. v. Consumers Finance Service, Inc. of Pennsylvania, 101 F.2d 514 (3 Cir. 1938); and Franklin Life Ins. Co. v. Johnson, 157 F.2d 653 (10 Cir. 1946).

Appellant submits that, on the basis of the foregoing, this Court has the right and authority to grant the relief requested in the motion; that a failure to do so may well cause irreparable harm and injury to Appellant; and that after a hearing on the merits of this appeal, this Court will remand the cause to the District Court in order to permit Appellant to amend

its complaint as aforesaid. For these reasons, Appellant respectfully requests that the motion and relief prayed for therein be granted.

Respectfully submitted,



Attorney for American
Liberty Insurance Company,
Appellant
First National Bank Building
Mobile, Alabama 36601

Of Counsel:

HAND, ARENDALL, BEDSOLE, GREAVES & JOHNSTON

CERTIFICATE OF SERVICE

I hereby certify that I have mailed a true and correct copy of the foregoing brief to:

James A. Walters, Esq., Attorney for Arlena L. Smith, Bobbie L. McMullen and Betty L. Goldy;

M. B. Montgomery, Esq., Attorney for Arlena L. Smith, Bobbie L. McMullen and Betty L. Goldy;

Howard Moore, Jr., Esq., Attorney for Grover Cleveland Harrison, Sojourner Motor Fleet, Inc., and Student Non-Violent Coordinating Committee;

Eddie H. Tucker, Esq., Attorney for Grover Cleveland Harrison, Sojourner Motor Fleet, Inc., and Student Non-Violent Coordinating Committee;

Jack H. Young, Esq., Attorney for National Association for the Advancement of Colored People and Southern Christian Leadership Conference;

Barbara A. Morris and Robert L. Carter, Esq., Attorneys for National Association for the Advancement of Colored People;

Melvyn Zarr, Esq., Attorney for Southern Christian Leadership Conference;

R. Jess Brown, Esq., Attorney for Congress of Racial Equality;

Alvin J. Bronstein, Esq., Attorney for Congress of Racial Equality;

Carl Rachlin, Esq., Attorney for Congress of Racial Equality;

L. H. Rosenthal, Esq., Attorney for Council of Federated Organizations; and

Benjamin E. Smith, Esq., Attorney for Council of Federated Organizations,

by depositing a copy of same in the United States mail, postage prepaid, addressed to the above parties on this, the 21st day of July, 1967.

Paul W Brock

Smith v Harris

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

NO. 24926

AMERICAN LIBERTY INSURANCE COMPANY,

Appellant,

versus

ARLENA L. SMITH, ET AL.,

Appellees.

AMENDMENT OF MOTION FOR INJUNCTION AND
STAY OF PROCEEDINGS PENDING APPEAL

TO THE HONORABLE THE JUDGES OF THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT:

Comes now American Liberty Insurance Company, Appellant in the above-styled cause and amends its motion for injunction and stay of proceedings previously filed herein by deleting in its entirety Paragraph 8 of said motion and inserting in lieu thereof the following:

8. That the death action has now been continued from its previous trial setting of July 10, 1967, but that it is still pending on the trial docket of the district court, and will be reset for trial sometime within the immediate future.

Paul W. Brock

Paul W. Brock, Attorney for
Appellant
First National Bank Building
Mobile, Alabama 36601

CERTIFICATE OF SERVICE

I hereby certify that I have mailed a true and correct copy of the foregoing amendment of motion to:

James A. Walters, Esq., Attorney for Arlena L. Smith, Bobbie L. McMullen and Betty L. Goldy;

M. B. Montgomery, Esq., Attorney for Arlena L. Smith, Bobbie L. McMullen and Betty L. Goldy;

Howard Moore, Jr., Esq., Attorney for Grover Cleveland Harrison, Sojourner Motor Fleet, Inc., and Student Non-Violent Coordinating Committee;

Eddie H. Tucker, Esq., Attorney for Grover Cleveland Harrison, Sojourner Motor Fleet, Inc., and Student Non-Violent Coordinating Committee;

Jack H. Young, Esq., Attorney for National Association for the Advancement of Colored People and Southern Christian Leadership Conference;

Barbara A. Morris and Robert L. Carter, Esq., Attorneys for National Association for the Advancement of Colored People;

Melvyn Zarr, Esq., Attorney for Southern Christian Leadership Conference;

R. Jess Brown, Esq., Attorney for Congress of Racial Equality;

Alvin J. Bronstein, Esq., Attorney for Congress of Racial Equality;

Carl Rachlin, Esq., Attorney for Congress of Racial Equality;

L. H. Rosenthal, Esq., Attorney for Council of Federated Organizations; and

Benjamin E. Smith, Esq., Attorney for Council of Federated Organizations,

by depositing a copy of same in the United States mail, postage prepaid, addressed to the above parties on this, the 25th day of July, 1967.

Paul W. Brock

Smith & Harrison

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

No. 24926

AMERICAN LIBERTY INSURANCE COMPANY,

Appellant,

versus

ARLENA L. SMITH, ET AL.,

Appellees.

MOTION FOR RECONSIDERATION OF ORDER

TO THE HONORABLE THE JUDGES OF THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT:

Comes now American Liberty Insurance Company, Appellant in the above-styled cause and files this, its motion for reconsideration of order, and respectively shows unto the Court as follows:

1. That on August 4, 1967 this Court entered an order denying the motion of appellant previously filed herein, moving this Court to issue an order enjoining, restraining or staying the further prosecution of Civil Action No. 3018 (S) (C) pending in the District Court for the Southern District of Mississippi.

2. That the Court in said order stated that the

denial of Appellant's motion is ". . .without prejudice to appellant's seeking relief in Smith et al vs. Harrison pending in the United States District Court for the Southern District of Mississippi, Southern Division, being Cause No. 3018 (S) (C), and without expressing any opinion concerning the judicial or procedural or substantive questions which may be before the Court in said Cause No. 3018."

3. That the above statement would indicate that the Court may have thought that appellant is a party or is taking an active part in the conduct of the defense of said Civil Action No. 3018 (S) (C); whereas, in truth and in fact, appellant has not been and is not a party to Civil Action No. 3018 (S) (C), nor has it been nor is it engaged in the defense of said action on behalf of any of the defendants named therein, and appellant therefore is precluded from seeking any relief in said action.

WHEREFORE, appellant moves the Court to reconsider its order of August 4, 1967, and to withdraw said order and to grant appellant the relief prayed for in its said motion previously filed herein.

Respectfully submitted,

ORIGINAL SIGNED
PAUL BROCK

Paul W. Brock
Attorney for Appellant
First National Bank Building
Mobile, Alabama 36601

Of Counsel:

HAND, ARENDALL, BEDSOLE, GREAVES & JOHNSTON

CERTIFICATE OF SERVICE

I hereby certify that I have mailed a true and correct copy of the foregoing amendment of motion to:

James A. Walters, Esq., Attorney for Arlena L. Smith, Bobbie L. McMullen and Betty L. Goldy;

M. B. Montgomery, Esq., Attorney for Arlena L. Smith, Bobbie L. McMullen and Betty L. Goldy;

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Melvyn Zarr, Esq., Attorney for Southern Christian Leadership Conference;

R. Jess Brown, Esq., Attorney for Congress of Racial Equality;

Alvin J. Bronstein, Esq., Attorney for Congress of Racial Eqality;

Carl Rachlin, Esq., Attorney for Congress of Racial Equality;

L. H. Rosenthal, Esq., Attorney for Council of Federated Organizations; and

Benjamin E. Smith, Esq., Attorney for Council of Federated Organizations,

by depositing a copy of same in the United States mail, postage prepaid, addressed to the above parties on this, the 18th day of August, 1967.

ORIGINAL SIGNED
PAUL BROCK

_____

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

NO. 24926

File
Smith
v
Harrison

AMERICAN LIBERTY INSURANCE COMPANY,

Appellant,

versus

ARLENA L. SMITH, ET AL.,

Appellees.

Appeal from the United States District Court
for the Southern District of Mississippi.

BRIEF FOR THE APPELLANT

Paul W. Brock
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Attorneys for American Liberty
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Of Counsel:

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UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

NO. 24926

AMERICAN LIBERTY INSURANCE COMPANY,

Appellant,

versus

ARLENA L. SMITH, ET AL.,

Appellees.

BRIEF FOR THE APPELLANT

STATEMENT OF THE CASE

This is an appeal from an order entered in this case on February 17, 1966, by the United States District Court for the Southern District of Mississippi (R., 108), dismissing the case because of alleged lack of proper venue, which the court stated was jurisdictional; and from a subsequent order entered by that court (R., 125) overruling Appellant's motion to reconsider said order of dismissal because of an alleged lack of complete diversity of citizenship between all plaintiffs and

defendants. The court also stated that Appellant had "no vested right to maintain a suit of this nature here." (R., 125). Appellant expects by this appeal to show that the court reached erroneous conclusions of law and fact in dismissing this case because of alleged improper venue; that the court erred in refusing to grant Appellant leave to amend its complaint to cure any alleged defect in venue and in diversity jurisdiction; and that the court committed further error in that it exceeded its discretion in denying Appellant the right to prosecute the action in that court.

This case was commenced with the filing by American Liberty Insurance Company (Appellant) in the United States District Court for the Southern District of Mississippi (District Court) of a complaint for declaratory judgment on April 7, 1965. Named as defendants therein were Arlena L. Smith (Smith), Bobbie L. McMullen (McMullen), Betty L. Goldy (Goldy), Grover Cleveland Harrison (Harrison), Sojourner Motor Fleet, Inc. (Sojourner), Student Non-Violent Coordinating Committee (SNCC), National Association for the

Advancement of Colored People (NAACP), Southern Christian Leadership Conference (SCLC), Congress of Racial Equality (CORE), and Council of Federated Organizations (COFO). All of such defendants will hereinafter sometimes be referred to as Appellees.

The averments of the complaint (R., 4-29) show that Appellant is seeking a judicial declaration determining its rights and obligations to Appellees with reference to a policy of automobile liability insurance issued by Appellant to Sojourner on or about September 21, 1964. Specifically, Appellant avers that on or about November 19, 1964, the parents of Appellees Smith, McMullen and Goldy were fatally injured as the result of an automobile collision with a vehicle operated by Appellee Harrison, and, following this, Smith, McMullen and Goldy filed a suit for damages against Harrison and the other Appellees with the exception of Sojourner (R., 25-29). For convenience, the action filed by Smith, McMullen and Goldy will sometimes be hereinafter referred to as the "death action", and the present action filed by Appellant will sometimes hereinafter be referred to as the "declaratory judgment action."

Appellant alleges in its complaint that it has refused to extend any coverage or to defend the death action on behalf of the defendants named therein because the automobile driven by Harrison at the time of the accident was not covered by said insurance policy (R., 6), inasmuch as it was not added to said policy by endorsement until the day after the accident, and, further, because said defendants breached those provisions of the policy giving Appellant the right to defend the death action (R., 7).

Jurisdiction of the declaratory judgment action is based upon diversity of citizenship existing between the plaintiff and the parties defendant (R., 5). The allegations show that Appellant is a corporation organized and existing under the laws of the State of Alabama, with its principal place of business in Birmingham, Alabama; that defendant Smith is a citizen of the State of Missouri; that defendants McMullen and Goldy are citizens of either Japan or of some state other than Alabama; and that all other defendants are citizens of states other than Alabama. The amount in controversy exceeds $10,000.00, exclusive of interest

and costs.

Subsequent to the filing of the complaint in the declaratory judgment action, the following pleadings were filed by the respective defendants:

(a) On May 3, 1965, CORE filed an answer denying generally the allegations of the complaint, and also objecting to the venue of the action as to it (R., 36-38).

(b) On May 4, 1965, Sojourner filed its answer, admitting the existence of a controversy and admitting that Appellant had refused to extend coverage. Sojourner did not object to venue (R., 38-39).

(c) On May 4, 1965, Harrison, NAACP and SNCC filed answers and did not object to the venue of the action (R., 39-43).

(d) On May 4, 1965, SCLC filed a motion to dismiss, raising the question of improper venue as to itself (R., 43-44).

This motion alleged that SCLC was a corporation incorporated under the laws of the State of Georgia and not licensed to do business nor doing business in the Southern District of Mississippi. The motion was not sworn to, nor were there any affidavits or exhibits attached to said motion in support of its allegations. No hearing was ever held by District Court on this motion.

(e) On May 21, 1965, defendants Smith, McMullen and Goldy filed their answers without objecting to the venue of the action (R., 47-48).

(f) On August 31, 1965, COFO filed a motion to dismiss on the basis that it was an unincorporated association "thereby being immune from suit as an entity" (R., 48). COFO did not object to venue.

Commencing in August, 1965, and continuing through

November of that year, counsel for Appellant began extensive discovery procedures in order to promptly prepare the declaratory judgment action for trial. He took and filed the depositions of Randolph T. Blackwell (R., 59), Constancia Romilly (R., 59); Harrison (R., 73), Joy Guyton Deese (R., 77), Fredrick B. Schultz (R., 77), J. A. Perkerson (R., 77), Betty Sue Carney and Doyal J. Brown, Jr. (R., 77). Additionally, counsel for Appellant took and filed the depositions of Clyde L. Woolen, Jr., Elizabeth R. Garmen and W. G. Stevens, Jr. (R., 68). In all, over 400 pages of testimony were transcribed in said depositions. Appellant also propounded interrogatories to COFO and Sojourner (R., 62, 65), and filed requests for the admission of facts to CORE (R., 73) and Sojourner (R., 74). Eventually, Appellant obtained answers to its requests for admissions (R., 78, 85), and to its interrogatories (R., 88-93).

On November 12, 1965, Harrison, SNCC and Sojourner filed a motion to dismiss the complaint on the ground that Appellant and Harrison were both citizens of the State of Alabama (R., 93-95) and that there was no diversity of citizenship. This motion was subsequently

amended to further allege that SNCC was an unincorporated association with members and officers who were citizens of the State of Alabama, the same state of the residence of Appellant (R., 96). After a hearing was held and evidence presented, the motion was taken under submission and briefs were filed by the parties.

Thereafter, and on February 17, 1966, a judgment was entered by the District Court dismissing the case because of alleged lack of venue, which the court stated was jurisdictional (R., 108). In the supporting memorandum filed with the judgment (R., 107-108), the District Court found as a matter of fact that the residence of Harrison was Atlanta, Georgia, and not Alabama. However, the court stated that, ". . . throughout this proceeding and upon a careful examination of this entire file, it is not made apparent that this Court has any jurisdiction of this case. The plaintiff is a resident of Alabama. The defendants certainly do not all live in Mississippi. Yet, a suit cannot be maintained in this Court on diversity jurisdiction unless either all of the plaintiffs or all of the defendants reside in Mississippi. That venue requirement is jurisdictional . . . . The

case will be dismissed for lack of jurisdiction." (R., 107-108; emphasis added). The order of the District Court did not grant Appellant leave to amend the complaint.

On February 25, 1966, eight days after said judgment, Appellant filed a timely motion to reconsider (R., 108), asking the court to vacate and set aside said judgment and to permit Appellant to amend the complaint by striking any defendant as to which venue would be improper and which defendant had not waived its right to object to venue. Despite numerous attempts by counsel for Appellant to obtain an early hearing of this motion, no hearing was held until more than a year later on March 6, 1967, at which time the matter was taken under submission. Written briefs were also submitted and, on May 2, 1967, the District Court entered an order overruling Appellant's motion to reconsider (R., 125), apparently on the additional ground that there is not complete diversity of citizenship between the Alabama plaintiff (Appellant) and "the voluntary associations who have members in Alabama," and on the further ground that Appellant has "no vested

right to maintain a suit of this nature here". Again, the District Court failed to grant Appellant leave to amend its complaint.

Although the time for the taking of an appeal had commenced to run from the judgment of May 2, 1967, the District Court still retained jurisdiction over the cause, and Appellant filed a motion on May 25, 1967 (R., 126-129), asking the court to relieve it from the judgments of February 17, 1966, and May 2, 1967, by amending same to grant Appellant leave to file an amended complaint (i) by dismissing any party defendant as to which venue would be improper (assuming said defendant had not waived its right to object to venue); (ii) by dismissing SNCC as a party defendant and any other voluntary association which had shown that it has members resident in the State of Alabama; and (iii) by joining as parties defendant certain residents of the State of Mississippi, being members of SNCC and representative parties on its behalf. This motion was noticed for hearing on June 1, 1967, and counsel for Appellant sought to present same to the District Court on that day. However, counsel was unable to prevail upon the court to hear said motion and, consequently, Appellant filed its notice of appeal on that

day (R., 129).

SPECIFICATIONS OF ERROR

1. The District Court erred in entering its order of February 17, 1966, dismissing the complaint for lack of jurisdiction on the basis of improper venue.

2. The District Court erred in entering its order of May 2, 1967, denying Appellant's motion to reconsider the court's order of February 17, 1966.

3. The District Court erred in dismissing Appellant's complaint without granting Appellant leave to amend same.

4. The District Court erred in its conclusion of law of February 17, 1966, that the question of venue is jurisdictional.

5. The District Court erred in failing to find as a fact that certain of the defendants had waived their right to object to improper venue.

6. The District Court erred in refusing to grant Appellant leave to amend its complaint by dismissing the defendants who had objected to the venue and who

had not waived their right to object to venue.

7. The District Court erred in refusing to grant Appellant leave to amend its complaint by dismissing any defendants whose presence in the lawsuit would defeat diversity jurisdiction of the court.

8. The District Court erroneously exceeded its discretion in dismissing the complaint because of the pendency of another lawsuit, to which Appellant was not a party and which lawsuit involved different issues of law and fact from those set forth in the complaint filed herein.

BRIEF OF ARGUMENT

A. THE COURT ERRED IN DISMISSING THE ACTION FOR ALLEGED LACK OF JURISDICTION ON THE BASIS OF IMPROPER VENUE

No hearing was ever held before the District Court on the motions to dismiss for improper venue filed by SCLC and CORE, nor were any affidavits or other evidence filed in support thereof. However, even assuming, for the sake of argument, that improper venue had been satisfactorily shown by SCLC and CORE as to themselves, the District Court committed error in its order of

February 17, 1966, by dismissing the complaint as to all defendants, rather than by restricting the order of dismissal to CORE and SCLC only.

1. The District Court Has Jurisdiction, Regardless of Venue.

Brown v. Pyle, 310 F.2d 95 (5 Cir. 1962) was an action brought in the District Court for the Southern District of Mississippi between residents of Louisiana and Missouri. In that case, as distinguished from this one (except as to SCLC and CORE), the defendant timely raised the question of improper venue. This court stated succinctly the distinction between jurisdiction and venue in the following language:

> "Jurisdiction is not to be confused with venue. Jurisdiction is the power to hear and determine a cause--the power to adjudicate. The court below had this power in that there was a complete diversity of parties coupled with the necessary amount involved. Venue is the place where that power may be exercised. In diversity cases, venue is controlled by 28 U.S.C.A. § 1391 (a). It provides that 'a civil action wherein jurisdiction is founded only on diversity of citizenship may * * * be brought only in the judicial district where all plaintiffs or all defendants reside.'
>
> "This does not mean that the federal

> court does not have the power to adjudicate the matter. Rather, it confers a personal privilege on the parties which can be expressly waived or impliedly waived by conduct." [emphasis added]

The Eighth Circuit said much the same thing in Farmers Elevator Mutual Insurance Co. v. Carl J. Austad & Sons, Inc., 343 F.2d 7 (8 Cir. 1965). This was also a declaratory judgment action, and the court recognized the fundamental distinction between jurisdiction and venue in federal diversity cases:

> "To be sure, the citizenship of the parties at the time of the institution of the action is controlling in determining whether federal diversity jurisdiction exists. However, jurisdiction of the subject matter--the power and authority of the Court to act, 14 Am. Jur. Courts, § 160; 21 C.J.S. Courts § 15, is not equivalent in meaning to Venue, the place where the power to adjudicate is to be exercised, the place where the suit may be or should be heard, 56 Am. Jur. Venue, § 2; 92 C.J.S. Venue § 1. The terms 'jurisdiction' and 'venue' should not be confused, 'for jurisdiction may not be conferred by consent or waiver upon a court which otherwise would have no jurisdiction of the subject matter of an action; but the venue of an action as fixed by statute may be changed by the consent of the parties and an objection that the plaintiff brought his suit in the wrong county may be waived by the failure of the defendant to make a timely objection; in either such case the court may render a valid

judgment.' 56 Am. Jur. Venue, § 2. Because of these fundamental differences, the tests to be applied in determining whether there is jurisdiction of the subject matter do not necessarily control the resolution of venue questions . . . .

"We also suggest by way of caveat that under Rule 12(b), Fed. R. Civ. P., 28 U.S. C.A., a motion raising objections to venue must be filed within twenty days after service of the summons and complaint. Failure to comply with this requirement constitutes a waiver of Rule 12(h), Fed. R. Civ. P.; see Nelson v. Victory Electric Works, Inc., supra, 210 F.Supp. at p. 957." [emphasis added]

To this same general effect are many other cases, among them:

Nierbo Co. v. Bethlehem Shipbuilding Corp., 308 U.S. 165 (1939);
Lee v. Chesapeake & Ohio R.R., 260 U.S. 653 (1923); and
Rensing v. Turner Aviation Corp., 166 F.Supp. 790 (N.D. Ill. 1958).

Application of the foregoing holdings indicates that the District Court in the case at bar apparently confused jurisdiction with venue and erred in dismissing the action because of alleged improper venue.

2. All of the Defendants Except SCLC and CORE Waived Any Right to Object to Improper Venue.

As stated heretofore and as is shown by the record, all of the defendants except SCLC, CORE and COFO first filed answers admitting or denying the allegations of the complaint and never objected to venue. COFO filed a motion to dismiss, but did not raise and has never raised the venue question (R., 48).

As was stated in the Farmers Elevator Mutual Insurance Company case, supra, under Rule 12(b), " . . . a motion raising objections to venue must be filed within twenty days after service of the summons and complaint. Failure to comply with this requirement constitutes a waiver of Rule 12(h)."

A reading of Rule 12(h) indicates that this is so, because it states that "a defense of . . . improper venue . . . is waived . . . if it is neither made by motion . . . nor included in a responsive pleading or an amendment thereof permitted by Rule 15(a) to be made as a matter of course."

Perhaps more directly to the point is Title 28, U.S.C., § 1406(b), which provides as follows:

> "Nothing in this chapter shall impair the jurisdiction of a district court of any matter involving a party who does not interpose timely and sufficient objection to the venue."

In United States v. Aetna Casualty & Surety Co., 297 F.2d 665 (2d Cir. 1962), the court said this with respect to the waiver of the defense of improper venue:

> "With jurisdiction based on 28 U.S.C. § 1352, the general venue statute (28 U.S.C. § 1391) would be applicable. The record does not present sufficient information for a determination whether or not venue is properly laid in the Southern District of New York under this section. But we do not reach this question, since it is quite clear that the issue is not before us. Aetna has answered raising defenses on the merits and to subject matter jurisdiction under the Miller Act, while the other defendants have moved to dismiss on the latter ground only. Objection to improper venue is only a waivable defense, lost by failure to 'interpose timely and sufficient objection.' 28 U.S.C. § 1406(b); F.R. 12(g) and (h); Panama R. Co. v. Johnson, 264 U.S. 375, 385, 44 S. Ct. 391, 68 L.Ed. 748; Lee v. Chesapeake & O. R. Co., 260 U.S. 653, 655, 45 S.Ct. 230, 67 L.Ed. 443; Freeman v. Bee Machine Co., 319 U.S. 448, 452, 63 S.Ct. 1146, 87 L.Ed. 1509; Drabik v. Murphy, 2 Cir., 246 F.2d 408. Here no objection, timely or otherwise, has been interposed on this issue; it is therefore waived." [emphasis added]

Similar language is found in Wade v. Dargan, 195

F.Supp. 1 (D.C. S.C. 1961), as follows:

> "When this action was commenced the plaintiff was a resident of Florence, South Carolina, in the Eastern District of South Carolina, and the defendant was a resident of Tampa, Florida, in the Southern District of Florida. The jurisdiction in this case is founded upon diversity of citizenship. This action, therefore, should have been brought either in the Eastern District of South Carolina, where the plaintiff resides, or in the Southern District of Florida, where the defendant resides. 28 U.S.C.A. § 1391(a). <u>However, objection that the complaint was filed in the wrong district was not taken before entry of general appearance by the defendant, or before some other defense upon the law or the facts was set up</u>. The objection to venue was not included in the answer or upon a motion previously made. The defendant appeared generally and answered the complaint upon the merits. Therefore, the defendant waived any objection to the venue. See, Evans v. Rushing, D.C. S.C., 175 F.Supp. 90, and the authorities cited therein." [emphasis added]

We submit that, under the foregoing authorities, all defendants except SCLC and CORE have waived their right to object to the venue of this action.

3. Objection to Venue is a Defense Personal to Each Defendant and Cannot Benefit any Other Defendant.

The fact that SCLC and CORE have raised the defense

of improper venue cannot inure to the advantage of the other defendants who have failed to interpose timely objection. If a defendant properly raises and proves improper venue as to itself, the complaint will be dismissed as to it, only, and the action will proceed against the other defendants.

Vance Trucking Co. v. Canal Insurance Co., 338 F.2d 943 (4 Cir. 1964) was an action for a declaratory judgment. The court found that venue was proper as to two defendants but improper as to the third. The court answered the contentions of the two defendants as follows:

> "These two defendants protest that even if venue is otherwise adequate as to them it is made inadequate by the joinder of Robert Carson, a Georgia resident, as a defendant. The short answer is that the defense of inadequate venue as to Robert Carson is personal to him and may not be raised by anyone else. Camp v. Gress, 250 U.S. 308, 39 S.Ct. 478, 63 L.Ed. 997 (1919); Schoen v. Mountain Producers Corp., 170 F.2d 707 (3 Cir. 1948), cert. denied, 336 U.S. 937, 69 S.Ct. 746, 93 L.Ed. 1095 (1949); 1 Moore, Federal Practice, § 0.140(1.-2) (1960). Venue is a doctrine of convenience and is not jurisdictional, and since the protesting parties are not inconvenienced by Carson's nonresidence, they cannot complain that the requirements of the venue statute are not satisfied as to him." [emphasis added]

An even stronger case is O'Brien v. Weber, 137 F.Supp. 684 (D.C. Pa. 1955). Here, two defendants answered the plaintiff's complaint without objecting to venue. A third filed a motion to dismiss alleging improper venue. The following language is pertinent:

> "It follows, therefore, that if all defendants had seasonably objected to venue, the dismissal of this case would be mandatory. The only questions, then, involved are: 1) whether or not the waiver of the defendants Allen establishes venue as to all parties and 2) whether or not the motion of the defendant Weber to dismiss, if granted, should be made to apply to all defendants.
>
> "The answer to both questions lies in the personal nature of the privilege to be sued only in the district of one's residence or that of the one bringing suit. 'A venue statute gives a 'personal privilege' to a defendant which he may assert or waive at his election.' Paramount Pictures v. Rodney, 3 Cir., 186 F.2d 111, 113, citing Commercial Casualty Ins. Co. v. Consolidated Stone Co., 278 U.S. 177, 49 S.Ct. 98, 73 L.Ed. 252. As was held in United Office and Professional Workers of America v. Smiley, D.C., 75 F.Supp. 695, citing Ladew v. Tennessee Copper Co., 218 U.S. 357 and 369, 31 S.Ct. 81, 54 L.Ed. 1069, the fact that a party is properly before the Court and consented to be made a codefendant did not deprive other defendants of the right to object to venue.
>
> "The motion is granted and the complaint dismissed, without prejudice, as to

the defendant Weber."

B. THE DISTRICT COURT ABUSED ITS DISCRETION IN REFUSING TO GRANT APPELLANT LEAVE TO AMEND ITS COMPLAINT

One of the separate motions filed by Appellant in its motion to reconsider the District Court's order of February 17, 1966, requested the court to permit Appellant to amend its complaint by striking CORE and any defendant as to which venue would be improper and which defendant had not waived its right to object to venue (R., 108-111). This motion was overruled by the court in its order of May 2, 1967 (R., 125). Similarly, the court failed to grant Appellant leave to amend its complaint by dismissing any defendant whose presence in the litigation might defeat the diversity jurisdiction of the cause as was intimated in the aforesaid May 2, 1967, order of dismissal (R., 125).

The rule respecting the right to amend after dismissal of the complaint is stated concisely by Professor Moore in 3 Moore's Federal Practice, 2d Edition, Section 15.10 as follows:

> "In dismissing a complaint for failure to state a claim or for failure to show jurisdiction, the court should heed the admonition of Rule 15 [Federal Rules of Civil Procedure] and allow amendment 'freely' if it appears at all possible that the plaintiff can correct the defect."

Furthermore, it has been held reversible error to summarily dismiss a complaint which could have been amended even though no request to amend was made to the court. Downey v. Palmer, 114 F.2d 116 (2 Cir. 1940).

In Sayre v. Shoemaker, 236 F.2d 370 (5 Cir. 1959), this court held that the trial court abused its discretion in dismissing plaintiff's complaint with prejudice and without leave to amend, although plaintiff had suggested merely hypothetical amendments to the complaint. Again, in Britton v. Atlantic Coastline Railroad Company, 303 F.2d 274 (5 Cir. 1962), this court, while affirming the trial court's order dismissing the complaint since it stated a claim within the exclusive jurisdiction of the Railway Adjustment Board, remanded the case to the trial court with the direction that the court below afford the plaintiffs an opportunity of filing "whatever amended complaints they properly can."

See also, Dowdy v. Proctor & Gamble Manufacturing Company, 267 F.2d 827 (5 Cir. 1965). In the latter case, this court quoted Foman v. Davis, 371 U.S. 178 (1962), setting forth the factors to consider in interpreting the requirements of Rule 15(a):

> "In the absence of any apparent or declared reason--such as undue delay, bad faith or dilatory motives on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of the allowance of the amendment, futility of the amendment, etc. --the leave sought should, as the rules require, be 'freely given'."

The record is clear that none of the above enumerated factors are present in this case.

In view of the foregoing, Appellant submits that it was error for the District Court to refuse to permit Appellant to amend its complaint by dismissing CORE and SCLC (on the basis that venue was improper as to them), and in failing to permit Appellant to amend its complaint by dismissing SCLC as a party defendant and joining instead certain of its Mississippi members as representative parties on its behalf, in view of the District Court's opinion that the presence of SCLC in

the lawsuit destroyed the requisite diversity jurisdiction.

C. THE DISTRICT COURT ABUSED ITS DISCRETION IN REFUSING TO ENTERTAIN JURISDICTION OF THE DECLARATORY JUDGMENT ACTION ON THE GROUND THAT THERE WAS ANOTHER ACTION PENDING

It is difficult to ascertain the exact basis of the statement in the May 2, 1967, order of the District Court in which it states that ". . . jurisdiction here is extremely doubtful, although no doubt exists as to jurisdiction by statute of the automobile accident case involved [the death action]; and the plaintiff having no vested right to maintain a suit of this nature here and the Court being of the opinion that fairness to all parties in interest indicates the necessity for a trial of the projected issues in a regular suit wherein no possible prejudice may intervene or cast its influence." (R., 125; parenthetical statement added). The court presumably is referring to the rule giving it some discretion in granting or refusing the remedy of declaratory judgment if another action is pending concerning the same issues. However,

such is not the case in the instant matter.

As alleged in the complaint filed by Appellant, this action was commenced under the Declaratory Judgments Act, Title 28, U.S.C., § 2201 et seq. (R., 4). While it is probably a correct statement of law that the Declaratory Judgments Act does not require the federal trial court to exercise its jurisdiction in every case, it is well settled that the court must exercise a sound judicial discretion in determining whether or not to grant the declaratory relief. See 6A Moore's Federal Practice, Second Edition, Section 57.08, where this is stated at page 3030:

> "But in reviewing the trial court's exercise of discretion to grant or refuse declaratory relief, a sound position is that the appellate court may substitute its judgment for that of the lower court. The determination of the trial court may, therefore, be reversed where, though not arbitrary or capricious, it was nevertheless erroneous. This view of the appellate court's power to review and reverse the action of the trial court in respect to its discretionary power to grant or refuse declaratory relief permits greater uniformity than would otherwise be possible. Thus Professor Borchard is able to say that this is 'discretion hardened by experience into rule'."

It is also clear that the exercise of this judicial discretion of the trial court is subject in every case to appellate review. Aetna Casualty & Surety Co. v. Quarles, 92 F.2d 321 (4 Cir. 1937). And in passing upon the trial court's exercise of discretion, the appellate court will substitute its judgment for that of the lower court, and the trial court will be reversed where its decision, though not arbitrary or capricious (which is the factor usually considered in matters of discretion), is nevertheless erroneous. See Delno v. Market St. Ry. Co., 124 F.2d 965 (9 Cir. 1942).

The pendency of another proceeding involving the same or similar issues and/or parties to the declaratory judgment action is an accepted factor to be considered in exercising this sound discretion. However, it is reversible error to refuse the granting of declaratory relief because of the pendency of another suit, if the controversy between the parties will not necessarily be determined in that suit. In Maryland Casualty Co. v. Consumers Finance Service, 101 F.2d 514 (3 Cir. 1938), the insurer brought a declaratory judgment action against the insured, naming therein persons injured by the

insured in an automobile accident and who had filed against the insured a suit for damages. The insurance company sought to determine its responsibility to the insured under the liability insurance policy which it had issued. The trial court dismissed the complaint. On appeal, the Court of Appeals for the Third Circuit reversed, holding that the court below exceeded its discretionary power in dismissing the declaratory judgment, holding that there were not similar issues involved in the two lawsuits.

> "The granting of the remedy of a declaratory judgment is nevertheless discretionary with the court and it may be refused if it will not finally settle the rights of the parties or if it is being sought merely to determine issues involved in cases already pending. Aetna Casualty & Surety Co. v. Quarles, 4 Cir., 92 F.2d 321. It may not be refused, however, merely on the ground that another remedy is available (Columbian Nat. Life Ins. Co. v. Foulke, supra) or because of the pendency of another suit, if the controversy between the parties will not necessarily be determined in that suit. The latter is the case here. The controversy in which the Casualty Company is involved is solely between Finance Service and itself. It involves the extent of the coverage of the policy and not the liability of Finance Service to the persons injured in the accident. It is entirely conceivable, as the Casualty Company urges, that there may be such liability on the

> part of Finance Service which is not within the policy coverage. The only question which will arise in the suits by the injured parties against Finance Service, however, is as to the liability of Finance Service to them. The question as to the duty of the Casualty Company to defend will not be involved and cannot be adjudicated in those proceedings. The company is, therefore, entitled to have the extent of the coverage of its policy declared in the present proceeding." [emphasis added]

Maryland Casualty Co. v. Faulkner, 126 F.2d 175 (6 Cir. 1952), involved facts similar to those in the case at bar. There, the trial court also dismissed the declaratory judgment action, purporting to exercise its judicial discretion. The Sixth Circuit reversed, holding that the insurer was entitled to have the coverage question declared, since the question of the liability of the insured to the persons injured in the accident was not involved in the declaratory judgment action, but was the subject of the other pending action.

> "We think that the motion to dismiss was erroneously granted. At the time the petition for declaratory relief was filed there was a suit pending in the state court, the result of which might ultimately impose an obligation upon the appellant. Other suits were imminent. The appellant was not

> a party defendant to such suits and the question of its responsibility, under the terms of its policy, could not therein be determined. An actual and present controversy, nevertheless, had arisen. Maryland Casualty Co. v. Pacific Coal & Oil Co., 312 U.S. 270, 61 S.Ct. 510, 85 L.Ed. 826. Diversity of citizenship existing between the appellant and its insured, and the jurisdictional amount being involved in the controversy, the appellant had a right under the Act to seek declaratory relief. This right could not in any way be affected by what thereafter transpired in state court. Moreover, the question of the appellant's liability under its agreement, could fully and completely be decided upon the issue presented by its bill, avoiding a multiplicity of suits, or defenses." [emphasis added]

See also, Franklin Life Ins. Co. v. Johnson, 157 F.2d 653 (10 Cir. 1946).

The present case falls within the rule enunciated in the foregoing authorities: It is an abuse of the trial court's discretion to dismiss a complaint for declaratory judgment because of the pendency of another action, where the issues presented in such other action are different from the issues tendered in the complaint for declaratory judgment. As stated, Appellant is not a party to the death action, nor is Sojourner, the named insured in the insurance policy; the issues to be

decided in the death action relate to the liability of Harrison and the civil rights organizations to the plaintiffs therein for the death of their parents; the issues presented in the declaratory judgment action relate to the question of whether Appellant is obligated under the terms of its insurance policy to afford defense and coverage to Sojourner and the defendants in the death action.

Therefore, a judgment in the death action will not finally settle the controversy between Appellant and Appellees, but on the contrary, the dismissal of the declaratory judgment action as ordered by the District Court will lead to further and multiple litigation between and among the parties to this appeal, should a judgment be rendered in favor of the plaintiffs in the death action. For these reasons, Appellant submits that the District Court exceeded its discretionary power and exercised the same erroneously.

CONCLUSION

For the reasons previously stated, Appellant respectfully requests that this Court reverse the

District Court and order the return of this case to it with instructions that it vacate and set aside its orders of February 17, 1966, and of May 2, 1967, and that this Court further direct the District Court to grant Appellant leave to amend its complaint heretofore filed herein.

Respectfully submitted,

Paul W. Brock

Harold D. Parkman

Attorneys for Appellant,
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Company
First National Bank Building
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Of Counsel:

HAND, ARENDALL, BEDSOLE, GREAVES & JOHNSTON

CERTIFICATE OF SERVICE

I hereby certify that I have mailed a true and correct copy of the foregoing brief to:

James A. Walters, Esq., Attorney for Arlena L. Smith, Bobbie L. McMullen and Betty L. Goldy;

M. B. Montgomery, Esq., Attorney for Arlena L. Smith, Bobbie L. McMullen and Betty L. Goldy;

Howard Moore, Jr., Esq., Attorney for Grover Cleveland Harrison, Sojourner Motor Fleet, Inc., and Student Non-Violent Coordinating Committee;

Eddie H. Tucker, Esq., Attorney for Grover Cleveland Harrison, Sojourner Motor Fleet, Inc., and Student Non-Violent Coordinating Committee;

Jack H. Young, Esq., Attorney for National Association for the Advancement of Colored People and Southern Christian Leadership Conference;

Barbara A. Morris and Robert L. Carter, Esq., Attorneys for National Association for the Advancement of Colored People;

Melvyn Zarr, Esq., Attorney for Southern Christian Leadership Conference;

R. Jess Brown, Esq., Attorney for Congress of Racial Equality;

Alvin J. Bronstein, Esq., Attorney for Congress of Racial Equality;

Carl Rachlin, Esq., Attorney for Congress of Racial Equality;

L. H. Rosenthal, Esq., Attorney for Council of Federated Organizations; and

Benjamin E. Smith, Esq., Attorney for Council of Federated Organizations,

by depositing a copy of same in the United States mail, postage prepaid, addressed to the above parties on this, the 13th day of November, 1967.

Harold D. Parkman

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT

OF MISSISSIPPI, SOUTHERN DIVISION

AMERICAN LIBERTY INSURANCE COMPANY, a corporation,	)	
Plaintiff,	)	
Vs.	)	
ARLENA L. SMITH; BOBBIE L. McMULLEN; BETTY L. GOLDY; GROVER CLEVELAND HARRISON; SOJOURNER MOTOR FLEET, INC.; STUDENT NON-VIOLENT COORDINATING COMMITTEE; NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE; SOUTHERN CHRISTIAN LEADERSHIP CONFERENCE; COUNCIL OF RACIAL EQUALITY and COUNCIL OF FEDERATED ORGANIZATIONS, jointly and severally,	)	CIVIL ACTION NO. 3040(S)(C)
Defendants.	)	

COMPLAINT FOR DECLARATORY JUDGMENT

The American Liberty Insurance Company files this complaint under the provisions of Title 28, U. S. Code, Sections 2201, et seq., against the defendants named above, and avers as follows:

1. The plaintiff is a corporation organized and existing under the laws of the State of Alabama, with its principal place of business in the City of Birmingham, Alabama. Defendant Smith is a citizen of the State of Missouri. Defendants McMullen and Goldy are citizens of either Japan or of some state other than Alabama; defendant Harrison is a citizen of a state other than Alabama, and the remaining defendants are citizens of states other than Alabama. This is an action wholly between a citizen of a state and citizens of different states or of foreign states

EXHIBIT "B"

and jurisdiction is based upon the diversity of citizenship existing between the plaintiff and the defendants. The amount in controversy exceeds Ten Thousand Dollars ($10,000.00), exclusive of interest and costs.

2. An actual controversy of a justiciable nature exists between plaintiff and the defendants involving their respective rights and liabilities under a liability policy of insurance entered into between the plaintiff and the defendant Sojourner Motor Fleet, Inc., which said controversy may be determined by judgment in this action without recourse to other actions or suits.

3. Plaintiff avers that it issued said policy of insurance on or about, to-wit, September 21, 1964, for a period of one year. A true copy of said policy is attached hereto, marked Exhibit A, incorporated by reference and made a part hereof.

4. On or about, to-wit, November 19, 1964, the father and mother of the defendants Smith, McMullen and Goldy, while operating a motor vehicle upon United States Highway 49 in Stone County, Mississippi, were involved in an automobile accident with a motor vehicle operated by the defendant Grover Cleveland Harrison. As the result of said accident, said defendants' mother and father were injured and died. Said defendants subsequently filed suit in this court against all of the other defendants other than Sojourner Motor Fleet, Inc., said suit being Civil Action No. 3018(S)(C). Attached hereto as Exhibit B is a true copy of the complaint in said suit, which is herewith incorporated by reference

and made a part hereof.

5. Plaintiff has refused to extend any coverage or to defend said suit on behalf of the defendants named therein, contending that the motor vehicle driven by the defendant Harrison at the time of said accident was not covered by said policy. All defendants except defendants Smith, McMullen and Goldy (whose position is unknown to plaintiff) contend that there was such coverage.

6. The motor vehicle operated by said defendant Harrison at the time of said accident, to-wit, a 1965 Plymouth Belvedere bearing Motor No. R157-109935, was not added to said policy by endorsement until the day following the accident in question, on, to-wit, November 20, 1964. Further, the provisions of said policy giving the plaintiff the right to defend said suit were breached by the defendants thereto in that they, without notice to the plaintiff, retained counsel who appeared in said cause on their behalf prior to completion of service of process upon some or all of said defendants, thereby depriving this plaintiff of the opportunity of conducting and controlling the defense of said suit.

7. Plaintiff further avers that although it has denied and does deny that there is any coverage under said policy as to the defendants herein insofar as the suit described in Exhibit B is concerned, nonetheless, should this court determine that plaintiff is in error and that such coverage does exist, then the further prosecution of said suit prior to a determination hereof would result in irrearable damage and injury to the plaintiff.

WHEREFORE, plaintiff prays that this court will enter a declaratory judgment determining the respective rights and liabilities of the parties hereto under said policy; that the court determine that the plaintiff is under no obligation to defend said suit on behalf of any of the defendants herein; that the court determine that the plaintiff is not liable under said policy to the defendants herein or to any of them to satisfy or to pay any part of any judgment which might be obtained in said suit commenced by the filing of Exhibit B; that the court determine that there is no coverage under said policy for any other claim or suit arising out of said automobile accident, and that the court will make and enter an order enjoining and restraining the further prosecution of said suit or will stay the same without such order, pending the determination of the rights and liabilities of the parties hereto.

Plaintiff prays for such other, further, different and general relief to which it may be entitled, the premises considered.

/s/ George E. Morse

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Of Counsel:

MORSE & MORSE

/s/ Paul W. Brock

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Of Counsel:

HAND, ARENDALL, BEDSOLE, GREAVES & JOHNSTON

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI SOUTHERN
DIVISION

AMERICAN LIBERTY INSURANCE COMPANY PLAINTIFF

VS. CIVIL ACTION NUMBER 3040

ARLENA L. SMITH, ET AL., DEFENDANTS

MOTIONS

Comes now the plaintiff, American Liberty Insurance Company, and files the following separate and several motions:

I

To vacate and set aside the judgment of the court of February 17, 1966, dismissing the above cause.

II

In the alternative and in furtherance of justice, to transfer said cause to the United States District Court of either the Southern or Northern District Alabama, under the provision of Title 28, Section 1406(a), U.S.C., or to any judicial district in which it could have been brought.

III

In the alternative, to set aside the judgment of the court of February 17, 1966, dismissing said cause, and to permit plaintiff to amend its Bill of Complaint, without prejudice, by striking the Congress of Racial Equality as a defendant and any defendant as to which venue would be improper and which defendant has not waived its right to object to venue.

IV

To amend said judgment of February 17, 1966, dismissing said cause so as to provide that the same shall be without prejudice to the plaintiff as to any of the issues of said cause or as to any issues which could have been litigated in said cause.

V

To set this cause for trial following the court's ruling on these motions, separately.

GROUNDS

Plaintiff assigns the following separate and several grounds in support of each of the foregoing motions, separately and severally:

I

For that said judgment is contrary to law.

II

For that venue is proper in this cause and this court has jurisdiction thereof.

III

For that venue is proper under the provisions of Title 28, Section 1391(c), which is applicable to corporate plaintiffs as well as to corporate defendants. Plaintiff has at all times pertinent hereto been licensed to do business in the State of Mississippi, and has had a statutory agent for the service of process in the State of Mississippi.

IV

For that this cause arises out of the operation of an automobile and, hende, venue is proper under the provisions of Title 28, Section 1391(s), U.S.C.

V

For that there has been a waiver of the right to object to venue by some or all of the defendants herein.

Hand, Arendall, Bedsole, Greaves
and Johnston
First National Bank Bldg.,
Mobile, Alabama

MORSE AND MORSE
Hatten Bldg., Gulfport, Mississippi
Attorneys for Plaintiff

BY: _____

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 24926

AMERICAN LIBERTY INSURANCE COMPANY,

Appellant,

versus

ARLENA L. SMITH, ET AL,

Appellees.

- - - - -

Appeal from the United States District Court for the Southern District of Mississippi

- - - - -

Before BROWN, Chief Judge, JONES and GOLDBERG, Circuit Judges.

BY THE COURT:

IT IS ORDERED that the motion of appellant for further stay of the proceedings in the District Court for the Southern District of Mississippi in its No. 3018 (S) (C), Arlena L. Smith, et al vs. Grover Cleveland Harrison, et al, pending this appeal, be and the same is hereby denied without prejudice to appellant's seeking relief in Smith et al vs Harrison pending in the United States District Court for the Southern District of Mississippi, Southern Division, being Cause No. 3018 (S) (C), and without expressing any opinion concerning the judicial or procedural or substantive questions which may be before the Court in said Cause No. 3018.

(ORIGINAL FILED AUGUST 4, 1967)

UNITED STATES COURT OF APPEALS
Fifth Circuit

Civ. Case 1073-65

ROCHELLE STEELE, et al.,
Appellants,

v.

GEORGE B. TAFT, et al.,
Appellees.

SUPPLEMENTARY BRIEF OF APPELLANTS

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Robert F. Collins, Esq.,
Nils R. Douglas, Esq.,
Lolis Elie, Esq.,
Charles Oldham, Esq.,
Ruth Jacobs, Esq.,
Floyd McKissick, Esq.,
Bruce Rogow, Esq.,

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UNITED STATES COURT OF APPEALS

Fifth Circuit

Civ. Case 1073-65

ROCHELLE STEELE, et al.,
Appellants,

v.

GEORGE B. TAFT, et al.,
Appellees.

SUPPLEMENTARY BRIEF OF APPELLANTS

INTRODUCTION

Meant merely as a supplement to the original brief submitted by the Appellants previously, this brief discusses discretionary powers of a municipality, relying on our earlier brief, particularly those pages (7-8) which, we urge successfully distinguish the cases cited by the Court below in dismissing the Complaint herein; nor do we believe there is any need to set forth the facts. For the purposes herein it is agreed that the Defendants, various officials of the City of Tallahassee, closed previously racially segregated swimming pools in order to deprive Plaintiffs of equal protection of the law and their privileges and immunities as

citizens.

(See paragraphs XIII through XVII of the complaint, R.6-9)

SUMMARY OF ARGUMENT

In its order of dismissal (R 15-17) the Court below relied upon the cases we attempt to distinguish (pp 7-9, main brief). Added to this however, is the argument made by the Court and relied upon by Appellees, that there are no definable limits to the power of a municipality to discontinue a discretionary function; while more graciously put, (R-17) the Court below accepts this argument - the pools may be closed so as to deny Negroes the right to use them on a non-discriminatory basis "on the face of it such policy may seem tragically absurd, but such decision is clearly under the law a function and responsibility of the elected public officials and the officers and employees working under them".

We urge, First of all, that this cannot, nor should it be the law although, from our examination, the particular question is novel. Were this the applicable law a mockery could be made of the Constitution. Merely by closing down needed or accepted public facilities to all equally, Negro and white, even to such an all-important institution as the

public schools this tragic argument would apply. (See statement of Justice Black in the Prince Edward County case.) 377 U.S. 218,@ 231.

Were we to state that our schools were a discretionary activity (and some do) then the same argument applies. The sounder argument, we claim, and for which we give our reasons below, limits the discretion of Tallahassee to the boundaries set forth in the U.S. Constitution.

Secondly we argue that reference to other comparable situations suggest strongly that while certain public and private institutions have broad discretionary powers, such powers cannot be executed for an illegal purpose. We suggest that violation of the U.S.Constitution is such an illegal purpose.

Thirdly it is our contention that although the right of a Court of Equity to correct such wrong may not be explicitly set forth, inherent in the power of the Court is the duty to make such orders as will eliminate the particular illegal conduct.

I

It cannot be contradicted, neither in the context of this case nor in the reality of what happened, that these pools were closed solely to prevent Negro persons from

using the all-white pools; the right to use such public facilities on a non-segregated basis requires no citation.

No less it is a wrong to close public facilities for racial reasons than it is to operate them in a racially violative manner. In each case race is the dominant factor guiding the decision. Simply stated, had not the request to use the pools on a non-segregated basis been made by Negroes, the pools would not have been closed during the hot summer on the anniversary of American Independence.

With race the dominant factor in the action taken by Appellees, it is somewhat specious to say that this mid-summer hardship falls equally on whites as well as Negroes. But this is what Appellees urge (p.4 of Appellee's brief of previous argument). Protecting the segregation of the races is not the function of municipal government, anymore than that of State or Federal government, and denying the use of discretionary service to all in order to prevent non-segregated use by Negroes confronts us with a question similiar to that described in Loving v. Virginia 388 U.S. 1(1967).

In that case the miscegenation statute of Virginia was at issue. As before us the Court was concerned with a broad power of the State, namely matrimonial relations, and

the argument was made in defense of the statute that the denial of a right to inter-marry applied equally to whites as well as Negroes. Therefore there was no denial of equal protection of the law. But the Supreme Court rejected this argument, as broad as the power of the State is over marriage it cannot be used to deny rights under the Constitution. Anti-miscegenation statutes which punished equally both white and Negro participants and which "equally" prevented married whites and Negroes from living in the State of Virginia are unequivocally unconstitutional. Virginia and every other State of the Union cannot deny Negroes and whites, equally or unequally, the right to live together, marry, cohabit, or pursue happiness together.

The arbitrary and racially discriminatory closing of all the swimming pools cannot be upheld on an equal application theory or used in that sense to say that Plaintiff and other Negroes are not being denied equal protection of the laws because the City by this act treats whites and Negroes equally. The Supreme Court answers the question presented:

> "Because we reject the motion that the mere 'equal application' of a statute containing racial classi-

fication is enough to remove the classification from the Fourteenth Amendment's proscription of all invidious racial discriminations ... we do not accept the State's contention that these statutes should be upheld ..." p.8. The Court continues its discussion of the State's equal application "theory in Loving to include all state or official governmental action ... "the clear and central purpose of the Fourteenth Amendment was to eliminate all official state sources of invidious racial discrimination in the States."p 10.

Closing here as an official act is the same in purpose and effect as maintaining separate facilities. It perpetrates all the stigmas and injustices inflicted upon the Negro race and continues to tell Negro citizens that they cannot mingle and live in a community and pursue human happiness if they choose to do so on equal terms with white citizens.

In substance, then Tallahassee tells us that whatever rights Appellants may have, political, legislative, etc., no right exists, however, to resort to the Courts to obtain relief in the case at bar.

A somewhat similiar question was presented in Fay v. Douds 172 F2d.720. The National Labor Relations Act provided no remedy in the Courts to the then non-complying union. Nevertheless the Court of Appeals for the Second Circuit specifically made clear that where a constitutional right is shown, even though the remedy in the law appears to be solely with the administrative board, the Court will see that the constitutional right is protected.

Where it is needed to protect the Constitution, the apparent absence of a specific Court remedy, will not deny the right of the Court to infer one. The bounds of broad administrative power are limited by the requirements of the Constitution. So also does the Constitution limit the broad power of municipal government.

II

On pages 9 - 12 of our main brief we have set forth several cases in which limits were set by the Federal Courts to discretionary conduct by the U.S. Government, Haynes v. Thomas 232 F2d. 688 (1956), to a county school board; Griffen v. County School Board of Prince Edwards County 377 U.S.218 (1964); to a State Legislature: Baker v. Carr 369 U.S.186

(1962), to the right of a private employer to close its business; Textile Workers of America v. Darlington Manufacturing Company, 380 U.S. 263 (1965)

In each case no explicit power of the Federal Court to act in the broad manner it did existed;nor did any of these situations have obvious self-limiting characteristics. To discharge a probationary employee for no reason at all is the right of any employer, certainly the U.S. (Haynes, infra). Having discharged him, however, explicitly for reasons that demand special treatment (security reasons),in order to uphold due process, then the apparently absolute discretion fades before the due process clause,and the employee is entitled to the hearing that is normally not the right of a probationary employee.

What right would seemingly be more secure than that of a bussinessman to close his doors. To operate and to close a business whether previously profitable or not, one would believe is beyond the scope of the law. (This assumes, of course, that laws equally applicable to all, e.g. internal revenue etc., are observed.)

Nothing in the Labor Act makes evident the power of the Board to order the opening of a business, that is nothing

except the need to prevent a mockery of the law. And so, affirmatively, a plant is ordered reopened in order to uphold the purposes of the law. Of lesse costs, but no less important is the issue concerning the impropriety of the Tallahassee act in closing the pools. As in Darlington a reopening should be directed. In any event the posture of this case is merely that the Court below declared we had no cause of action. Cases such as Haynes and Darlington indicate the error below.

III

What we seek is an injunction to place Appellants in the posiiton they would be if Appellees had not illegally closed the pools.

Normally such order would entail the restraint of particular conduct of the offending party. Futility is not the object of orders of the Court. Although magnanimously, Tallahassee agrees it may not operate the pools in a discriminatory manner, nor may it sell or lease them to one who will operate them in such fashion, such acceptances by Tallahassee do not meet the needs of the problem, namely the discriminatory closing of these pools in order to prevent their non-

discriminatory use by Appellants. Only an order that requires their operation and prevents their being closed for any reason that thwarts the purposes of the United States Constitution places Appellants in the proper position.

Within this framework is contained the possibility that the pools might be closed for an appropriate municipal reason. Whether or not the reason for the closure is an appropriate one, or merely the cover for an unconstitutional one, may have to be the subject of a proceeding, but this is not an unusal duty of any court. We request that Appellees be directed to reopen the three swimming pools, to operate them open to all on a non-discriminatory basis; that Appellees may not lease, sell or license any use to one who will operate the property in a discriminatory fashion; that Apellees may not close said pools for any reason in order to deprive Appellants, and the class they represent of their use because they are Negroes,

CONCLUSION

For the various reasons stated we urge that the judgment of the Court below shall be reversed, and that an order be entered directing the reopening of said pools on a non-discriminatory basis, or alternatively that the case be

returned to the District Court for trial on the merits, and that Appellants have the costs of this appeal.

Respectfully submitted,

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John Due, Esq.,
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Attorneys for Appellants.

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Ruth Jacobs, Esq.,
Floyd McKissick, Esq.,
Bruce Rogow, Esq.,

Smith v Harrison

United States Court of Appeals for the Fifth Circuit

New Orleans La.
September 26, 1967

FOR INFORMATION OF ALL COUNSEL—PLEASE READ CAREFULLY:

Re: No. 24926 - American Liberty Insurance Company
-vs- Arlena L. Smith, Et Al,

The record in the above entitled case is in final form. The time for filing BRIEFS is indicated in the following rule.

RULE 24, as amended, Subsections 1, 3 and 4 OF THIS COURT, READ IN PERTINENT PART AS FOLLOWS:

1. The Clerk shall mail a notice to each party or his counsel so soon as the record by printing, or otherwise, is in final form for a hearing. The counsel for the appellant, or petitioner, shall file with the Clerk of this Court within thirty days from the RECEIPT of such notice *** twenty copies of a printed brief, one to be signed in handwriting by an attorney of this Court who has entered an appearance in the case; together with a certificate that a copy has been mailed to or previously served on the opposite party or parties. Four copies of typewritten briefs in behalf of poor persons in forma pauperis cases, with a like certificate of service, shall be sufficient. [All such typewritten briefs (motions or petitions, etc.) should be backed when filed.]**

3. The Counsel for appellee or respondent shall file with the Clerk of this court within twenty (20) days from the service upon him of opponent's brief *** twenty copies of a printed brief, with a certificate that a copy has been mailed to or personally served on his opponent or opponents. His brief shall be of a like character with that required of the appellant or petitioner, except that no specification of errors shall be required and no statement of the case unless that presented by the appellant or petitioner is controverted.**

4. Reply or supplemental briefs in printed form, and containing a certificate of service upon opposing counsel, may be filed at any time without special leave of court.

Certificate of service upon *all* opposing counsel *must* be incorporated in *all* copies of briefs, motions, petitions or other documents filed.

Since the Court desires that briefs from all parties be on file for its consideration well in advance of the assigned date for hearing, counsel should make every effort to file their briefs by the date due.

Notice will be issued to all counsel for whom an appearance has been entered of the date and place fixed for hearing, usually at least thirty (30) days in advance thereof.

RULE 25, as amended January 19, 1956, reads in part as follows:

"Not more than one-half hour on each side will be allowed for the argument, without special leave of the court **." (See important notation below)*

However, counsel for any party may waive oral argument and submit his case on brief, if he so desires, and notifies this office by the date fixed for hearing.

Any written request for special handling not provided for in the Rules, whether by formal motion, letter or otherwise, as well as any information which counsel desire the Clerk to communicate to the Court, should be submitted in quadruplicate, with an original and three legible copies.

EDWARD W. WADSWORTH
Clerk

* In order to facilitate the calendaring of the cases so that each day's arguments will not be unduly extended, the Clerk's office must be advised by the time the briefs are filed as to how many counsel will expect argument (not more than two for each party), and how much time each will need. This is particularly true of multi-party appeals. The Court upon the hearing "may allow such less time as shall appear to it sufficient for a fair presentation of the questions involved . . ." Rule 25 (3).

COURT RULES

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

Before Tuttle, Chief Judge, and Rives, Jones, Brown, Wisdom, Gewin and Bell, Circuit Judges.

ORDER ADOPTING RULE 23(6)

It is ORDERED that the rules of this court be and they are hereby amended by adding Section (6) to Rule 23, as follows:

(6) The provisions of subdivision (a), (b), (c), (d), (e), (f), (g) and (i) of Rule 75, Federal Rules of Civil Procedure, are not applicable to appeals to this court from a District Court.

Dated: July 28, 1964

ORDER ADOPTING RULE 24(2)(e)

It is ORDERED that the rules of this court be and they are hereby amended by adding subsection (e) to Rule 24(2), as follows:

(e) Except by permission of the court, briefs shall not exceed 50 pages of standard typographic printing or 70 pages of printing by any other process of duplicating or copying, exclusive of pages containing the table of contents, tables of citations and an addendum containing statutes, rules, regulations, etc.

Effective: September 1, 1964

NOTICE

Please be advised that briefs from both parties must be on file in advance of the assignment of this case for hearing on a yet undetermined date during this term. Accordingly, in order that this Court may meet its schedule of sittings for this entire Term, your brief should be filed on time in accordance with the Court's rules.

EDWARD W. WADSWORTH,
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 24926

AMERICAN LIBERTY INSURANCE COMPANY,

Appellant,

versus

ARLENA L. SMITH, ET AL,

Appellees.

- - - - -

Appeal from the United States District Court for the Southern District of Mississippi

- - - - -

Before BROWN, Chief Judge, JONES and GOLDBERG, Circuit Judges.

BY THE COURT:

IT IS ORDERED that the motion of appellant for a reconsideration of the order of this Court of August 4, 1967, in this cause be, and the same is hereby DENIED.

(ORIGINAL FILED SEPTEMBER 7, 1967)

File
Smith
Harrison

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
BILOXI, MISSISSIPPI
JUNE 1, 1967

Mrs. Elizabeth Mathison
Chief Deputy Clerk
U. S. District Court
P. O. Box 769
Jackson, Mississippi

Re: APPEAL IN Civil Action No. 3040

s/ Harold Cox
Presiding Judge

Styled: American Liberty Insurance Company, a corporation
vs.
Arlena L. Smith, Bobbie L. McMullen; Betty L. Goldy, Grover Cleveland Harrison, Sojourner Motor Fleet, Inc., Student Non-Violent Coordinating Committee; National Association For the Advancement of Colored People; Southern Christian Leadership Conference; Council of Racial Equality, and Council of Federated Organizations, jointly and severally

Notice of appeal was filed by American Liberty Insurance Company

on June 1, 1967 in the above case.

Special Directions: _____

The names and addresses of attorneys for the parties in this cause are listed below:

NAME OF ATTORNEY	ADDRESS OF ATTORNEY	PARTY WHICH ATTORNEY REPRESENTS
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R. Jess Brown	125 1/2 N. Farish St. Jackson, Miss.	Defendant
Alvin J. Bronstein	603 N. Farish St. Jackson, Miss.	Defendant
Carl Rachlin	38 Park Row New York, New York	Defendant
Howard Moore	859 Hunter St., N. W. Atlanta, Ga.	Defendant
Robert L. Carter Barbara A. Morris	20 W. 40th St. New York, New York	Defendant

L. H. Rosenthal	518 E. Capitol St. Jackson, Miss.	Defendant
Benjamin E. Smith	505 Baronne St. New Orleans, La.	Defendant

Deputy Clerk

cc: Miss Anne Crews
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Court Reporter
P. O. Box 993
Jackson, Miss.

Mrs. Madge Randolph
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Gulfport, Miss.

Mr. Denton B. Jordan
Court Reporter
135 Woodglen Drive
Miss. City, Mississippi

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DIVISION OF THE SOUTHERN DISTRICT
OF MISSISSIPPI

AMERICAN LIBERTY INSURANCE
COMPANY, a corporation, PLAINTIFF

VS. CIVIL ACTION NO. 3040 (S)(C)

ARLENA L. SMITH, ET AL., DEFENDANTS

NOTICE

TO: Arlena L. Smith,
Bobbie L. McMullen
and Betty L. Goldie
c/o James Armstrong Walters
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Mr. M. B. Montgomery
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and

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c/o Jack H. Young
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and

c/o Howard Moore, Jr.
Attorney at Law
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Congress of Racial Equality
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and

c/o Alvin J. Bronstein
Attorney at Law
602 North Farish Street
Jackson, Mississippi

and

c/o Carl Rachlin
Attorney at Law
38 Park Row
New York, New York

Council of Federated Organizations
39 Park Row
New York, New York

and

c/o Benjamin E. Smith
Attorney at Law
1006 Baronne Building
New Orleans, Louisiana

and

c/o Dave Dennis,
Robert Moses,
Bob Weil and Emily Grodon
1017 Lynch Street
Jackson, Mississippi

Please take notice that we have this day been advised that Hon. William Harold Cox. U. S. District Judge, will not hold his motion day in Jackson, Mississippi, on April 8, 1966; that at the present time it unknown to us when the motion which was noticed before Judge Cox for hearing April 8, 1966, may be heard. We will advise all parties as soon as possible when we intend to call up this motion.

MORSE AND MORSE
Hatten Building, Gulfport, Mississippi

BY: [signature]

IN THE UNITED STATES DISTRICT COURT FOR THE

SOUTHERN DISTRICT OF MISSISSIPPI

SOUTHERN DIVISION

ARLENA L. SMITH, BOBBIE L.
McCULLEN, and BETTY GOLDY PLAINTIFFS

VS: NO. 3018(s) (C)

GROVER CLEVELAND HARRISON, ET AL DEFENDANTS

MOTION FOR ADDITIONAL TIME
TO ANSWER INTERROGATORIES

Now comes M. B. Montgomery of Counsel for Plaintiffs and respectfully moves the Court to grant sixty (60) days additional time within which Plaintiffs may file their answers to the interrogatories propounded to them by the Defendant, Grover Cleveland Harrison, and as grounds for said Motion respectfully shows that the Plaintiff, Bobbie L. McCullen, is one and the same person as Mrs. John L. McCullen, whose address is 7-10 Daiko Cho, Higashi JU, Nagoya, Japan, where she is presently residing; the Plaintiff, Arlena L. Smith, is a resident of the State of Missouri, whose post office address is 803 Lynn Haven Lane, Hazelwood, Missouri, and the Plaintiff, Betty Goldy, is one and the same person as Mrs. T. J. Goldy, who is a resident of the State of California, whose post office address is 2150 Edar Place, Torrence, California, and it has been impossible to obtain signed and sworn answers

from said Plaintiffs within the time provided in Rule 33 of the Federal Rules of Civil Procedure.

WHEREFORE, Plaintiffs move the Court that they be granted sixty (60) days additional time within which to file said answers to said interrogatories and otherwise comply with Rule 33 thereasto.

Respectfully submitted,

BARNETT, MONTGOMERY, McCLINTOCK
& CUNNINGHAM
315 Barnett Building
Jackson, Mississippi

BY: M. B. Montgomery
M. B. Montgomery

OF COUNSEL FOR PLAINTIFFS

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

ARLENA L. SMITH, BOBBIE L.
McMULLEN AND BETTY L. GOLDY — PLAINTIFFS

VS

NO. 3018 (S)(C)

GROVER CLEVELAND HARRISON,
STUDENT NONVIOLENT COORDINATING
COMMITTEE, NATIONAL ASSOCIATION
FOR THE ADVANCEMENT OF COLORED
PEOPLE, SOUTHERN CHRISTIAN LEADERSHIP
CONFERENCE, COUNCIL OF FEDERATED
ORGANIZATIONS, COUNCIL OF RACIAL
EQUALITY — DEFENDANTS

BRIEF IN SUPPORT OF DEFENDANT
CONGRESS OF RACIAL EQUALITY'S
MOTION FOR SUMMARY JUDGMENT

Summary judgment is a procedure for determining in advance whether or not there is any genuine issue as to any material fact. F.R.C.P. 56; Whittaker v. Coleman (CCA 5, 1940), 115 F.2d 305; 6 Moore, Federal Practice 2068, par. 56.04 (2d ed.). If there is no genuine issue as to any material fact, and if defendant Congress of Racial Equality is entitled to judgment as a matter of law, then it is mandatory that the court so grant summary judgment; it is given no discretion in such a situation. Ibid. Thus if facts can be presented by affidavit or otherwise to show that no liability can attach to the movant and if these facts are not refuted by a contrary factual showing, then there is no genuine issue as to any material fact, and movant is entitled to judgment as a matter of law. It is not enough that the facts shown be refuted by mere allegations contained in the pleadings; rather, they must be refuted by affidavits or other evidence.

In the instant case plaintiffs allege in their complaint that Grover Cleveland Harrison, the driver of the automobile involved in the accident which forms the basis of this action, was "in the employ of", among others, the movant Congress of Racial

Equality, improperly named the "Council" of Racial Equality in the complaint and hereinafter referred to as CORE. The basis of the alleged liability of the movant CORE lies in the doctrine of respondeat superior; that the alleged liability of the defendant Grover Cleveland Harrison is imputed to the movant CORE because of an alleged master-servant relationship. There is no other possible basis in plaintiffs' complaint for liability on the part of the movant CORE. If, therefore, the defendant Grover Cleveland Harrison neither is not now, was not on November 19, 1964, nor ever has been an officer, agent or employee of any sort of the movant CORE, then the doctrine of respondeat superior does not apply and there is no genuine issue as to any fact material to the movant CORE's liability. All other possible factual issues are immaterial to the movant CORE's liability, and the movant CORE is entitled to summary judgment, dismissing it from this action.

The affidavit of George Wiley, Associate National Director of the movant CORE, filed with the motion for summary judgment, shows that the defendant Grover Cleveland Harrison is not now, was not on November 19, 1964, and never was an officer, agent, or employee in any capacity of the movant CORE. If plaintiffs have any evidence to the contrary, they must now submit it; they can no longer rely on the mere allegations in their complaint. F.R.C.P. 56(e) reads:

> "When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him."

Plaintiffs are now precisely in the position contemplated by the above-quoted F.R.C.P. 56(e). If they are unable to respond with evidence of any facts contrary to those shown by the affidavit of George Wiley, then the movant CORE is entitled

to summary judgment as a matter of law. It is well-settled that summary judgment may be granted on affidavit alone. 6 Moore, Fed. Prac., 56.15(4), p. 2135; Orvis v. Brickman, 196 F.2d 762 (D.C. Cir. 1952). In Port of Palm Beach Dist. v. Goethals, 104 F.2d 706 (5th Cir., 1939) pleaded allegation was negated by a similar affidavit the effect of which, as Judge Sibley said, was "on motion for summary judgment [for plaintiffs] to force defendants to bring forward what they have touching that." There is no discretion involved in determining whether or not to grant summary judgment, for the rule says that under these circumstances it "shall be entered . . ." (emphasis added). The court cannot deny summary judgment on the basis of plaintiffs' hope that facts contrary to those contained in the movant's affidavit might develop at trial; rather, they must respond with some contrary facts at this time. Port of Palm Beach Dist. v. Goethals, supra.

The movant CORE respectfully submits that, in the absence of any contrary facts being shown by the plaintiffs, it is entitled to judgment as a matter of law.

Respectfully submitted,

R. Jess Brown

Alvin J. Bronstein

603 N. Parish Street
Jackson, Mississippi

Carl Rachlin
38 Park Row
New York, N. Y.

Rachlin

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT

OF MISSISSIPPI, SOUTHERN DIVISION

AMERICAN LIBERTY INSURANCE COMPANY, a corporation,	)	
Plaintiff,	)	
Vs.	)	
ARLENA L. SMITH; BOBBIE L. McMULLEN; BETTY L. GOLDY; GROVER CLEVELAND HARRISON; SOJOURNER MOTOR FLEET, INC.; STUDENT NON-VIOLENT COORDINATING COMMITTEE; NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE; SOUTHERN CHRISTIAN LEADERSHIP CONFERENCE; COUNCIL OF RACIAL EQUALITY and COUNCIL OF FEDERATED ORGANIZATIONS, jointly and severally,	)	CIVIL ACTION NO. _____
Defendants.	)	

Answer of Def Cooper & Racial Equality sued herein as "Council of Federated Orgs"

COMPLAINT FOR DECLARATORY JUDGMENT

The American Liberty Insurance Company files this complaint under the provisions of Title 28, U. S. Code, Sections 2201, et seq., against the defendants named above, and avers as follows:

1. The plaintiff is a corporation organized and existing under the laws of the State of Alabama, with its principal place of business in the City of Birmingham, Alabama. Defendant Smith is a citizen of the State of Missouri. Defendants McMullen and Goldy are citizens of either Japan or of some state other than Alabama; defendant Harrison is a citizen of a state other than Alabama, and the remaining defendants are citizens of states other than Alabama. This is an action wholly between a citizen of a state and citizens of different states or of foreign states

citizenship denied by Def

Def not a proper party defendant

No civil liability alleged as to Council of Federated Orgs

and jurisdiction is based upon the diversity of citizenship existing between the plaintiff and the defendants. The amount in controversy exceeds Ten Thousand Dollars ($10,000.00), exclusive of interest and costs.

2. An actual controversy of a justiciable nature exists between plaintiff and the defendants involving their respective rights and liabilities under a liability policy of insurance entered into between the plaintiff and the defendant Sojourner Motor Fleet, Inc., which said controversy may be determined by judgment in this action without recourse to other actions or suits.

3. Plaintiff avers that it issued said policy of insurance on or about, to-wit, September 21, 1964, for a period of one year. A true copy of said policy is attached hereto, marked Exhibit A, incorporated by reference and made a part hereof.

4. On or about, to-wit, November 19, 1964, the father and mother of the defendants Smith, McMullen and Goldy, while operating a motor vehicle upon United States Highway 49 in Stone County, Mississippi, were involved in an automobile accident with a motor vehicle operated by the defendant Grover Cleveland Harrison. As the result of said accident, said defendants' mother and father were injured and died. Said defendants subsequently filed suit in this court against all of the other defendants other than Sojourner Motor Fleet, Inc., said suit being Civil Action No. 3018(S)(C). Attached hereto as Exhibit B is a true copy of the complaint in said suit, which is herewith incorporated by reference

and made a part hereof.

5. Plaintiff has refused to extend any coverage or to defend said suit on behalf of the defendants named therein, contending that the motor vehicle driven by the defendant Harrison at the time of said accident was not covered by said policy. All defendants except defendants Smith, McMullen and Goldy (whose position is unknown to plaintiff) contend that there was such coverage.

6. The motor vehicle operated by said defendant Harrison at the time of said accident, to-wit, a 1965 Plymouth Belvedere bearing Motor No. R157-109935, was not added to said policy by endorsement until the day following the accident in question, on, to-wit, November 20, 1964. Further, the provisions of said policy giving the plaintiff the right to defend said suit were breached by the defendants thereto in that they, without notice to the plaintiff, retained counsel who appeared in said cause on their behalf prior to completion of service of process upon some or all of said defendants, thereby depriving this plaintiff of the opportunity of conducting and controlling the defense of said suit.

7. Plaintiff further avers that although it has denied and does deny that there is any coverage under said policy as to the defendants herein insofar as the suit described in Exhibit B is concerned, nonetheless, should this court determine that plaintiff is in error and that such coverage does exist, then the further prosecution of said suit prior to a determination hereof would result in irreparable damage and injury to the plaintiff.

WHEREFORE, plaintiff prays that this court will enter a declaratory judgment determining the respective rights and liabilities of the parties hereto under said policy; that the court determine that the plaintiff is under no obligation to defend said suit on behalf of any of the defendants herein; that the court determine that the plaintiff is not liable under said policy to the defendants herein or to any of them to satisfy or to pay any part of any judgment which might be obtained in said suit commenced by the filing of Exhibit B; that the court determine that there is no coverage under said policy for any other claim or suit arising out of said automobile accident, and that the court will make and enter an order enjoining and restraining the further prosecution of said suit or will stay the same without such order, pending the determination of the rights and liabilities of the parties hereto.

Plaintiff prays for such other, further, different and general relief to which it may be entitled, the premises considered.

George E. Morse, Attorney
for Plaintiff,
Hatten Building,
Gulfport, Mississippi.

Of Counsel:

MORSE & MORSE

Paul W. Brock

Paul W. Brock, Attorney
for Plaintiff,
622 First National Bank Building,
Mobile, Alabama.

Of Counsel:

HAND, ARENDALL, BEDSOLE, GREAVES & JOHNSTON

IN THE

UNITED STATES

COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 24926

AMERICAN LIBERTY INSURANCE COMPANY,

Appellant

versus

ARLENA L. SMITH, ET AL.

Appellees.

Appeal from the United States District Court
for the Southern District of Mississippi

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UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

NO. 24926

AMERICAN LIBERTY INSURANCE COMPANY,

Appellant,

versus

ARLENA L. SMITH, ET AL.,

Appellees.

DESIGNATION OF RECORD ON APPEAL

Appellant, American Liberty Insurance Company, designates the complete record and all of the proceedings and evidence in this action to be contained in the record on appeal, except, however, all depositions filed in the cause, including, without limitation, the depositions of the following individuals: Randolph T. Blackwell, Constancia Romilly, Clyde L. Woolen, Jr., Elizabeth R. Garmen, Doyal J. Brown, Jr., J. A. Perkerson, Betty Sue Carney, Fredric B. Schultz, Joy Guyton Deese, W. G. Stevens, Jr., and Grover Cleveland Harrison.

S/ Paul W. Brock
Paul W. Brock
Attorney for Appellant
First National Bank Building
Mobile, Alabama 36601

...oOo...

CROSS-DESIGNATION OF RECORD ON APPEAL

(Number and Title Omitted) (Filed Aug 4, 1967)

Appellee Southern Christian Leadership Conference hereby designates all of the depositions filed in this cause to be contained in the record on appeal.

S/ Melvyn Zarr
JACK H. YOUNG
115 1/2 North Farish Street
Jackson, Mississippi

MELVIN ZARR
10 Columbus Circle
New York, New York 10019

Attorneys for Appellee
Southern Christian Leadership
Conference

...oOo...

HAND, ARENDALL, BEDSOLE, GREAVES & JOHNSTON

LAWYERS

First National Bank Building

MOBILE, ALABAMA

36601

August 17, 1967

Honorable Edward W. Wadsworth, Clerk
United States Court of Appeals
Fifth Circuit
New Orleans, Louisiana

Re: American Liberty Insurance Company, Appellant,
vs. Arlena L. Smith, et al., Appellees,
No. 24926

Dear Mr. Wadsworth:

I have just completed a long distance telephone

conversation with Mr. Zarr concerning the cross-designation which he has filed on behalf of appellee, Southern Christian Leadership Conference, wherein he has designated all of the depositions filed in the cause to be contained in the record on appeal. You will recall that we discussed this cross-designation yesterday, and specifically, whether or not SCLC was requesting that the depositions be reproduced by the printer.

Mr. Zarr informs me that his intention in filing the cross-designation is not to cause the depositions to be reproduced, but rather to assure that the depositions will constitute a part of the original record on appeal. Of course, I have no objections to this, and indeed, I understand that the depositions in fact do constitute a part of the original record. My main concern was with the possibility of having to reproduce the depositions, which no longer present a problem, in view of my conversation with Mr. Zarr.

Accordingly, Mr. Zarr has requested that I inform you that he did not intend by his filing of the cross-designation to cause the depositions to be reproduced by the printer. He merely wished to make certain that the depositions were not left out of the original record on appeal. Both he and I think that this letter will suffice to clarify the situation; however, if you require formal action on either

his or my part, please so advise.

Your very truly,

S/ Harold D. Parkman
For the Firm

HDP, egr

George Morse, Esq.
Melvyn Zarr, Esq.
Mr. Andrew J. Bacon, Sr.
c/o AB Letter Service, Inc.

...oOo...

IN THE UNITED STATES DISTRICT COURT FOR THE

SOUTHERN DISTRICT OF MISSISSIPPI, SOUTHERN

DIVISION

AMERICAN LIBERTY INSURANCE
COMPANY, a corporation,

Plaintiff,

Vs.

ARLENA L. SMITH; BOBBIE L.
McMULLEN; BETTY L. GOLDY;
GROVER CLEVELAND HARRISON;
SOJOURNER MOTOR FLEET, INC.;
STUDENT NON-VIOLENT COORDINATING
COMMITTEE; NATIONAL ASSOCIATION
FOR THE ADVANCEMENT OF COLORED
PEOPLE; SOUTHERN CHRISTIAN LEADER-
SHIP CONFERENCE; COUNCIL OF
RACIAL EQUALITY and COUNCIL
OF FEDERATED ORGANIZATIONS,
jointly and severally,

Defendants.

CIVIL ACTION NO. 3040(S)(C)

COMPLAINT FOR DECLARATORY JUDGMENT

The American Liberty Insurance Company files this complaint under the provisions of Title 28, U. S. Code, Sections 2201, et seq., against the defendants named above,

and avers as follows:

1. The plaintiff is a corporation organized and existing under the laws of the State of Alabama, with its principal place of business in the City of Birmingham, Alabama. Defendant Smith is a citizen of the State of Missouri. Defendants McMullen and Goldy are citizens of either Japan or of some state other than Alabama; defendant Harrison is a citizen of a state other than Albama, and the remaining defendants are citizens of states other than Alabama. This is an action wholly between a citizen of a state and citizens of different states or of foreign states and jurisdiction is based upon the diversity of citizenship existing between the plaintiff and the defendants. The amount in controversy exceeds Ten Thousand Dollars ($10,000.00), exclusive of interest and costs.

2. An actual controversy of a justiciable nature exists between plaintiff and the defendants involving their respective rights and liabilities under a liability policy of insurance entered into between the plaintiff and the defendant Sojourner Motor Fleet, Inc., which said controversy may be determined by judgment in this action without recourse to other actions or suits.

3. Plaintiff avers that it issued said policy of insurance on or about, to-wit, September 21, 1964, for a period of one year. A true copy of said policy is attached

hereto, marked Exhibit A, incorporated by reference and made a part hereof.

4. On or about, to-wit, November 19, 1964, the father and mother of the defendants Smith, McMullen and Goldy, while operating a motor vehicle upon United States Highway 49 in Stone County, Mississippi, were involved in an automobile accident with a motor vehicle operated by the defendant Grover Cleveland Harrison. As the result of said accident, said defendants' mother and father were injured and died. Said defendants subsequently filed suit in this court against all of the other defendants other than Sojourner Motor Fleet, Inc., said suit being Civil Action No. 3018(S)(C). Attached hereto as Exhibit B is a true copy of the complaint in said suit, which is herewith incorporated by reference and made a part hereof.

5. Plaintiff has refused to extend any coverage or to defend said suit on behalf of the defendants named therein, contending that the motor vehicle driven by the defendant Harrison at the time of said accident was not covered by said policy. All defendants except defendants Smith, McMullen and Goldy (whose position is unknown to plaintiff) contend that there was such coverage.

6. The motor vehicle operated by said defendant Harrison at the time of said accident, to-wit, a 1965 Plymouth Belvedere bearing Motor No. R157-109935, was not added to

said policy by endorsement until the day following the accident in question, on, to-wit, November 20, 1964. Further, the provisions of said policy giving the plaintiff the right to defend said suit were breached by the defendants thereto in that they, without notice to the plaintiff, retained counsel who appeared in said cause on their behalf prior to completion of service of process upon some or all of said defendants, thereby depriving this plaintiff of the opportunity of conducting and controlling the defense of said suit.

7. Plaintiff further avers that although it has denied and does deny that there is any coverage under said policy as to the defendants herein insofar as the suit described in Exhibit B is concerned, nonetheless, should this court determine that plaintiff is in error and that such coverage does exist, then the further prosecution of said suit prior to a determination hereof would result in irrearable damage and injury to the plaintiff.

WHEREFORE, plaintiff prays that this court will enter a declaratory judgment determining the respective rights and liabilities of the parties hereto under said policy; that the court determine that the plaintiff is under no obligation to defend said suit on behalf of any of the defendants herein; that the court determine that the plaintiff is not liable under said policy to the defendants

herein or to any of them to satisfy or to pay any part of any judgment which might be obtained in said suit commenced by the filing of Exhibit B; that the court determine that there is no coverage under said policy for any other claim or suit arising out of said automobile accident, and that the court will make and enter an order enjoining and restraining the further prosecution of said suit or will stay the same without such order, pending the determination of the rights and liabilities of the parties hereto.

Plaintiff prays for such other, further, different and general relief to which it may be entitled, the premises considered.

S/ George E. Morse
George E. Morse, Attorney
for Plaintiff,
Hatten Building,
Gulfport, Mississippi.

Of Counsel:

MORSE & MORSE

S/ Paul W. Brock
Paul W. Brock, Attorney
for Plaintiff,
622 First National Bank Building,
Mobile, Alabama

Of Counsel:

HAND ARENDALL, BEDSOLE, GREAVES & JOHNSTON

...oOo...

AMERICAN LIBERTY INSURANCE COMPANY
P. O. Box 2508
Birmingham, Alabama 35201

CERTIFICATION

I, William H. Pruett, Secretary of American Liberty Insurance Company, do hereby certify that the foregoing to which this certificate is attached is a true and correct copy of Policy DM 672444, together with endorsements, which policy was issued on September 21, 1964 to Sojourner Motor Fleet, Inc.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of American Liberty Insurance Company this 23rd day of March, 1965.

AMERICAN LIBERTY INSURANCE COMPANY

(SEAL)

By: William H. Pruett
William H. Pruett, Secretary

COMBINATION AUTOMOBILE POLICY

No. DM

STOCK COMPANY

AMERICAN LIBERTY INSURANCE COMPANY

Birmingham, Alabama

DECLARATIONS

Item 1. Named Insured and Address: (No., Street, Town, County, State)

Item 2. Policy Period: (Mo. Day Yr.) (Months)

From to

12:01 A.M., standard time at the address of the named insured as stated herein.

The automobile will be principally garaged in the above town or city, county and state, unless otherwise stated herein:*

Occupation of the named insured is (IF MARRIED WOMAN, GIVE HUSBAND'S OCCUPATION OR BUSINESS)

Designation of insured for purposes of division 2 of coverage (A) required by Insuring Agreement III:

Item 3. The insurance afforded is only with respect to such and so many of the following coverages as are indicated by specific premium charge or charges. The limit of the company's liability against each such coverage shall be as stated herein, subject to all the terms of this policy having reference thereto.

PREMIUMS	LIMITS OF LIABILITY	CODE	COVERAGES
$	thousand dollars each person thousand dollars each accident	A	Bodily Injury Liability
$	thousand dollars each accident	B	Property Damage Liability
$	$ each person	C	Automobile Medical Payments
$	$	D	Comprehensive—Loss by or Damage to the Automobile, except by Collision or Upset, including Fire, Theft and Windstorm
$	$ Actual Cash Value less deductible	E	Collision or Upset
$	$	F	Fire, Lightning and Transportation
$	$	G	Theft (Broad Form)
$	$	H	Windstorm, Hail, Earthquake or Explosion
$	$	I	Combined Additional Coverage
$	for each disablement	J	Towing and Labor Costs
$	$		
$	Total Premium Forms and endorsements made part of policy at time of issue:		

Item 4. Description of the automobile and facts respecting its purchase by the named insured:

Year of Model	Trade Name	Model	Body Type; Truck Size; Truck Load Capacity; Tank Gallonage Capacity; or Bus Seating Capacity	Identification Number (I) Serial Number (S) Motor Number (M)	Number of Cylinders	F.O.B. List Price or Delivered Price at Factory	Class & Rating Symbol	Actual Cost When Purchased Including Equipment	Purchased Month, Year	Purchased New or Used

Any loss under Coverages D, E, F, G, H and I is payable as interest may appear to the named insured and

The automobile is unencumbered unless otherwise stated herein.* The encumbrance, number and amount of each installment payment, due date and amount of final installment are:

Item 5. The purposes for which the automobile is to be used are "pleasure and business," unless otherwise stated herein:*

Item 6. Unless otherwise stated herein: (a) If no automobile is described above, the total number of private passenger automobiles owned on the effective date of this policy by the named insured and by his spouse, if a resident of the same household, does not exceed one. (b) Except with respect to bailment lease, conditional sale, purchase agreement, mortgage or other encumbrance, the named insured is the sole owner of the automobile. (c) During the past three years no insurer has canceled insurance, issued to the named insured, similar to that afforded hereunder:*

* Absence of an entry means "No Exceptions."

Countersigned: at

By _____ Authorized Agent

OKP6019-DM
(REV.5-1-58)

SPECIMEN POLICY

AMERICAN LIBERTY INSURANCE COMPANY

(A stock insurance company, herein called the company)

Agrees with the insured, named in the declarations made a part hereof, in consideration of the payment of the premium and in reliance upon the statements in the declarations and subject to the limits of liability, exclusions, conditions and other terms of this policy:

INSURING AGREEMENTS

I. Coverage A—Bodily Injury Liability: To pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages because of bodily injury, sickness or disease, including death at any time resulting therefrom, sustained by any person, caused by accident and arising out of the ownership, maintenance or use of the automobile.

Coverage B—Property Damage Liability: To pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages because of injury to or destruction of property, including the loss of use thereof, caused by accident and arising out of the ownership, maintenance or use of the automobile.

Coverage C—Automobile Medical Payments: To pay all reasonable expenses incurred within one year from the date of accident for necessary medical, surgical and dental services, including prosthetic devices, and necessary ambulance, hospital, professional nursing and funeral services:

Division 1. To or for each person who sustains bodily injury, sickness or disease, caused by accident, while in or upon or while entering into or alighting from the automobile, provided the automobile is being used by the named insured or his spouse if a resident of the same household, or with the permission of either; or

Division 2. To or for each insured who sustains bodily injury, sickness or disease, caused by accident, while in or upon, or while entering into or alighting from, or through being struck by, an automobile.

Coverage D—Comprehensive Loss of or Damage to the Automobile, Except by Collision or Upset: To pay for direct and accidental loss of or damage to the automobile, hereinafter called loss, except loss caused by collision of the automobile with another object or by upset of the automobile or by collision of the automobile with a vehicle to which it is attached. Breakage of glass and loss caused by missiles, falling objects, fire, theft, explosion, earthquake, windstorm, hail, water, flood, malicious mischief or vandalism, riot or civil commotion shall not be deemed loss caused by collision or upset.

Coverage E—Collision or Upset: To pay for direct and accidental loss of or damage to the automobile, hereinafter called loss, caused by collision of the automobile with another object or by upset of the automobile, but only for the amount of each such loss in excess of the deductible amount, if any, stated in the declarations as applicable hereto.

Coverage F—Fire, Lightning and Transportation: To pay for direct and accidental loss of or damage to the automobile, hereinafter called loss, caused (a) by fire or lightning, (b) by smoke or smudge due to a sudden, unusual and faulty operation of any fixed heating equipment serving the premises in which the automobile is located, or (c) by the stranding, sinking, burning, collision or derailment of any conveyance in or upon which the automobile is being transported.

Coverage G—Theft (Broad Form): To pay for loss of or damage to the automobile, hereinafter called loss, caused by theft, larceny, robbery or pilferage.

Coverage H—Windstorm, Hail, Earthquake or Explosion: To pay for direct and accidental loss of or damage to the automobile, hereinafter called loss, caused by windstorm, hail, earthquake or explosion, excluding loss or damage caused by rain, snow or sleet, whether or not wind-driven.

Coverage I—Combined Additional Coverage: To pay for direct and accidental loss of or damage to the automobile, hereinafter called loss, caused by windstorm, hail, earthquake, explosion, riot or civil commotion, or the forced landing or falling of any aircraft or of its parts or equipment, flood or rising waters, malicious mischief or vandalism, external discharge or leakage of water except loss resulting from rain, snow or sleet whether or not wind-driven; provided, with respect to each automobile $25 shall be deducted from each loss caused by malicious mischief or vandalism.

Coverage J—Towing and Labor Costs: To pay for towing and labor costs necessitated by the disablement of the automobile, provided the labor is performed at the place of disablement.

II. Defense, Settlement, Supplementary Payments: With respect to such insurance as is afforded by this policy for bodily injury liability and for property damage liability, the company shall:

(a) defend any suit against the insured alleging such injury, sickness, disease or destruction and seeking damages on account thereof, even if such suit is groundless, false or fraudulent; but the company may make such investigation, negotiation and settlement of any claim or suit as it deems expedient;

(b) (1) pay all premiums on bonds to release attachments for an amount not in excess of the applicable limit of liability of this policy, all premiums on appeal bonds required in any such defended suit, the cost of bail bonds required of the insured in the event of accident or traffic law violation during the policy period, not to exceed $100 per bail bond, but without any obligation to apply for or furnish any such bonds;

(2) pay all expenses incurred by the company, all costs taxed against the insured in any such suit and all interest accruing after entry of judgment until the company has paid or tendered or deposited in court such part of such judgment as does not exceed the limit of the company's liability thereon;

(3) pay expenses incurred by the insured for such immediate medical and surgical relief to others as shall be imperative at the time of the accident;

(4) reimburse the insured for all reasonable expenses, other than loss of earnings, incurred at the company's request;

and the amounts so incurred, except settlements of claims and suits, are payable by the company in addition to the applicable limit of liability of this policy.

III. Definition of Insured: (a) With respect to the insurance for bodily injury liability and for property damage liability the unqualified word "insured" includes the named insured and, if the named insured is an individual, his spouse if a resident of the same household, and also includes any person while using the automobile and any person or organization legally responsible for the use thereof, provided the actual use of the automobile is by the named insured or such spouse or with the permission of either. The insurance with respect to any person or organization other than the named insured or such spouse does not apply:

(1) to any person or organization, or to any agent or employee thereof, operating an automobile sales agency, repair shop, service station, storage garage or public parking place, with respect to any accident arising out of the operation thereof, but this provision does not apply to a resident of the same household as the named insured, to a partnership in which such resident or the named insured is a partner, or to any partner, agent or employee of such resident or partnership;

(2) to any employee with respect to injury to or sickness, disease or death of another employee of the same employer injured in the course of such employment in an accident arising out of the maintenance or use of the automobile in the business of such employer.

(b) With respect to the insurance under division 2 of coverage C, the unqualified word "insured" means:

(1) the named insured, if an individual or husband and wife who are residents of the same household, otherwise the person designated in Item 2 of the declarations, and

(2) while residents of the same household as the named insured or such designated person, his spouse and the relatives of either;

provided, if such named insured or designated person shall die, this insurance shall cover any person who was an insured at the time of such death.

IV. Automobile Defined, Trailers, Private Passenger Automobile, Two or More Automobiles, Including Automatic Insurance:

(a) **Automobile.** Except with respect to division 2 of coverage C and except where stated to the contrary, the word "automobile" means:

(1) **Described Automobile**—the motor vehicle or trailer described in this policy or, if none is so described, with respect to coverages A, B and division 1 of coverage C, any private passenger automobile owned on the effective date of this policy by the named insured or by his spouse if a resident of the same household;

(2) **Trailer**—under coverages A, B and division 1 of coverage C, a trailer not described in this policy, if designed for use with a private passenger automobile, if not being used for business purposes with another type automobile, and under division 1 of coverage C if not a home, office, store, display or passenger trailer;

(3) **Temporary Substitute Automobile**—under coverages A, B and division 1 of coverage C, an automobile not owned by the named insured or his spouse if a resident of the same household, while temporarily used as a substitute for the described automobile when withdrawn from normal use because of its breakdown, repair, servicing, loss or destruction;

(4) **Newly Acquired Automobile**—an automobile, ownership of which is acquired by the named insured or his spouse if a resident of the same household, if (i) it replaces an automobile owned by either and covered by this policy, or the company insures all automobiles owned by the named insured and such spouse on the date of its delivery, and (ii) the named insured or such spouse notifies the company within thirty days following such delivery date; but such notice is not required under cov-

(Attach Endorsements Here)

erages A, B and division 1 of coverage C if the newly acquired automobile replaces an owned automobile covered by this policy. The insurance with respect to the newly acquired automobile does not apply to any loss against which the named insured or such spouse has other valid and collectible insurance. Under coverages D, E, F, G, H and I, when a limit of liability is expressed in the declarations as a stated amount, such limit as to the newly acquired automobile shall be replaced by the actual cash value. The named insured shall pay any additional premium required because of the application of the insurance to such newly acquired automobile.

The word "automobile" also includes under coverages D, E, F, G, H and I its equipment and other equipment permanently attached thereto.

Under division 2 of coverage C, the word "automobile" means a land motor vehicle or trailer not operated on rails or crawler-treads, but does not mean: (1) a farm type tractor or other equipment designed for use principally off public roads, except while actually upon public roads, or (2) a land motor vehicle or trailer while located for use as a residence or premises and not as a vehicle.

(b) **Private Passenger Automobile.** The term "private passenger automobile" means a private passenger, station wagon or jeep type automobile, and also includes under coverages A, B and division 1 of coverage C any automobile the purposes of use of which are stated in the declarations as "pleasure and business."

(c) **Semitrailer.** The word "trailer" includes semitrailer.

(d) **Two or More Automobiles.** When two or more automobiles are insured hereunder, the terms of this policy shall apply separately to each, but a motor vehicle and a trailer or trailers attached thereto shall be held to be one automobile as respects limits of liability under coverages A and B and separate automobiles as respects limits of liability, including any deductible provisions, under coverages D, E, F, G, H, I and J.

V. Use of Other Automobiles: If the named insured is an individual or husband and wife and if during the policy period such named insured, or the spouse of such individual if a resident of the same household, owns a private passenger automobile covered by this policy, such insurance as is afforded by this policy under coverages A, B, division 1 of coverage C and coverage E with respect to said automobile applies with respect to any other automobile, subject to the following provisions:

(a) With respect to the insurance for bodily injury liability and for property damage liability the unqualified word "insured" includes (1) such named insured and spouse, and (2) any other person or organization legally responsible for the use by such named insured or spouse of an automobile not owned or hired by such other person or organization. Insuring Agreement III does not apply to this insurance.

(b) Under division 1 of coverage C, this insurance applies only if the injury results from the operation of such other automobile by such named insured or spouse or on behalf of either by a private chauffeur or domestic servant of such named insured or spouse, or from the occupancy of said automobile by such named insured or spouse.

(c) Under coverage E, this insurance applies only with respect to a private passenger automobile while being operated or used by such named insured or spouse. Exclusion (k) does not apply to this insuring agreement.

(d) This insuring agreement does not apply:

(1) to any automobile owned by or furnished for regular use to either the named insured or a member of the same household other than a private chauffeur or domestic servant of such named insured or spouse;

(2) to any accident arising out of the operation of an automobile sales agency, repair shop, service station, storage garage or public parking place;

(3) under coverages A, B or division 1 of coverage C, to any automobile while used in a business or occupation of such named insured or spouse except a private passenger automobile operated or occupied by such named insured, spouse, private chauffeur or domestic servant;

(4) under coverage E, to any loss when there is any other insurance which would apply thereto in the absence of this insuring agreement, whether such other insurance covers the interest of the named insured or spouse, the owner of the automobile or any other person or organization.

VI. Loss of Use by Theft—Rental Reimbursement: The company, following a theft covered under this policy of the entire automobile, shall reimburse the named insured for expense not exceeding $5 for any one day nor totaling more than $150 or the actual cash value of the automobile at time of theft, whichever is less, incurred for the rental of a substitute automobile, including taxicabs. Such reimbursement is payable by the company in addition to the applicable limit of liability of this policy.

Reimbursement is limited to such expense incurred during the period commencing seventy-two hours after such theft has been reported to the company and the police and terminating, regardless of expiration of the policy period, on the date the whereabouts of the automobile becomes known to the named insured or the company or on such earlier date as the company makes or tenders settlement for such theft.

Such reimbursement shall be made only if the stolen automobile was a private passenger automobile not used as a public or livery conveyance and not owned and held for sale by an automobile dealer.

VII. General Average and Salvage Charges: The company, with respect to such transportation insurance as is afforded by this policy, shall pay any general average and salvage charges for which the named insured becomes legally liable.

VIII. Policy Period, Territory, Purposes of Use: This policy applies only to accidents which occur and to direct and accidental losses to the automobile which are sustained during the policy period, while the automobile is within the United States of America, its territories or possessions, or Canada, or is being transported between ports thereof and, if a "described automobile" under Insuring Agreement IV, is owned, maintained and used for the purposes stated as applicable thereto in the declarations.

EXCLUSIONS

This policy does not apply:

(a) except under division 2 of coverage C, while the automobile is used as a public or livery conveyance, unless such use is specifically declared and described in this policy;

(b) under coverages A and B, to liability assumed by the insured under any contract or agreement;

(c) under coverages A and B, while the automobile is used for the towing of any trailer owned or hired by the insured and not covered by like insurance in the company; or while any trailer covered by this policy is used with any automobile owned or hired by the insured and not covered by like insurance in the company;

(d) under coverage A, to bodily injury to or sickness, disease or death of any employee of the insured arising out of and in the course of (1) domestic employment by the insured, if benefits therefor are in whole or in part either payable or required to be provided under any workmen's compensation law, or (2) other employment by the insured;

(e) under coverage A, to any obligation for which the insured or any carrier as his insurer may be held liable under any workmen's compensation, unemployment compensation or disability benefits law, or under any similar law;

(f) under coverage B, to injury to or destruction of property owned or transported by the insured, or property rented to or in charge of the insured other than a residence or private garage injured or destroyed by a private passenger automobile covered by this policy;

(g) under division 1 of coverage C, to bodily injury to or sickness, disease or death of any employee of the named insured or

or Nuclear Insurance Association of Canada, or would be an insured under any such policy but for its termination upon exhaustion of its limit of liability; or

(b) resulting from the hazardous properties of nuclear material and with respect to which (1) any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or (2) the insured is, or had this policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.

(2) Under any Medical Payments Coverage, or under any Supplementary Payments provision relating to immediate medical or surgical relief, to expenses incurred with respect to bodily injury, sickness, disease or death resulting from the hazardous properties of nuclear material and arising out of the operation of a nuclear facility by any person or organization.

(3) Under any Liability Coverage, to injury, sickness, disease, death or destruction resulting from the hazardous properties of nuclear material, if

(a) the nuclear material (1) is at any nuclear facility owned by, or operated by or on behalf of, an insured or (2) has been discharged or dispersed therefrom;

(b) the nuclear material is contained in spent fuel or waste at any time possessed, handled, used, processed, stored, transported or disposed of by or on

spouse arising out of and in the course of (1) domestic employment by the named insured or spouse if benefits therefor are in whole or in part either payable or required to be provided under any workmen's compensation law, or (2) other employment by the named insured or spouse;

(h) under coverage C, to bodily injury to or sickness, disease or death of any person who is an employee of an automobile sales agency, repair shop, service station, storage garage or public parking place, if the accident arises out of the operation thereof and if benefits therefor are in whole or in part either payable or required to be provided under any workmen's compensation law;

(i) under division 2 of coverage C, to bodily injury to or sickness, disease or death of an insured sustained while in or upon or while entering into or alighting from an automobile owned by any insured;

(j) to injury, sickness, disease, death or loss due to war, whether or not declared, civil war, insurrection, rebellion or revolution, or to any act or condition incident to any of the foregoing, (1) with respect to expenses under Insuring Agreement II (b) (3) or under coverage C, or (2) under coverages D, E, F, G, H, I and J;

(k) under coverages D, E, F, G, H, I and J, if the automobile is or at any time becomes subject to any bailment lease, conditional sale, purchase agreement, mortgage or other encumbrance not specifically declared and described in this policy;

(l) under coverages D, E, F, G, H, I and J, to any damage to the automobile which is due and confined to wear and tear, freezing, mechanical or electrical breakdown or failure, unless such damage is the result of other loss covered by this policy;

(m) under coverages D, E, F, G, H, I and J, to robes, wearing apparel or personal effects;

(n) under coverages D, E, F, G, H, I and J, to tires unless damaged by fire or stolen or unless such loss be coincident with and from the same cause as other loss covered by this policy;

(o) under coverages D and G, to loss due to conversion, embezzlement or secretion by any person in possession of the automobile under a bailment lease, conditional sale, purchase agreement, mortgage or other encumbrance;

(p) under coverage E, to breakage of glass if insurance with respect to such breakage is otherwise afforded;

(q) under coverages D, E, F, G, H, I and J, to loss due to confiscation by duly constituted governmental or civil authority;

(r) under coverages D, E, F, G, H, I and J to loss due to radioactive contamination.

(s) (1) Under any Liability Coverage, to injury, sickness, disease, death or destruction.

(a) with respect to which an insured under the policy is also an insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters

behalf of an insured; or

(c) the injury, sickness, disease, death or destruction arises out of the furnishing by an insured of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any nuclear facility, but if such facility is located within the United States of America, its territories or possessions or Canada, this exclusion (c) applies only to injury to or destruction of property at such nuclear facility.

(4) As used in this policy:

"hazardous properties" include radioactive, toxic or explosive properties;

"nuclear material" means source material, special nuclear material or byproduct material;

"source material", **"special nuclear material"**, and **"byproduct material"** have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof;

"spent fuel" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a nuclear reactor;

"waste" means any waste material (1) containing byproduct material and (2) resulting from the operation by any person or organization of any nuclear facility included within the definition of nuclear facility under paragraph (a) or (b) thereof;

"nuclear facility" means

(a) any nuclear reactor,

(b) any equipment or device designed or used for (1) separating the isotopes of uranium or plutonium, (2) processing or utilizing spent fuel, or (3) handling, processing or packaging waste,

(c) any equipment or device used for the processing, fabricating or alloying of special nuclear material if at any time the total amount of such material in the custody of the insured at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235,

(d) any structure, basin, excavation, premises or place prepared or used for the storage or disposal of waste,

and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations;

"nuclear reactor" means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material;

With respect to injury to or destruction of property, the word **"injury"** or **"destruction"** includes all forms of radioactive contamination of property.

CONDITIONS

1. Notice of Accident—Coverages A, B and C: When an accident occurs written notice shall be given by or on behalf of the insured to the company or any of its authorized agents as soon as practicable. Such notice shall contain particulars sufficient to identify the insured and also reasonably obtainable information respecting the time, place and circumstances of the accident, the names and addresses of the injured and of available witnesses.

2. Notice of Claim or Suit—Coverages A and B: If claim is made or suit is brought against the insured, the insured shall immediately forward to the company every demand, notice, summons or other process received by him or his representative.

3. Limits of Liability—Coverage A: The limit of bodily injury liability stated in the declarations as applicable to "each person" is the limit

of the company's liability for all damages, including damages for care and loss of services, arising out of bodily injury, sickness or disease, including death at any time resulting therefrom, sustained by one person as the result of any one accident; the limit of such liability stated in the declarations as applicable to "each accident" is, subject to the above provision respecting each person, the total limit of the company's liability for all damages, including damages for care and loss of services, arising out of bodily injury, sickness or disease, including death at any time resulting therefrom, sustained by two or more persons as the result of any one accident.

4. Limit of Liability—Coverage B: The limit of property damage liability stated in the declarations as applicable to "each accident" is the total limit of the company's liability for all damages arising out of injury to or destruction of all property of one or more persons or organizations, including the loss of use thereof, as the result of any one accident.

5. Limit of Liability—Coverage C: The limit of liability for medical payments stated in the declarations as applicable to "each person" is the limit of the company's liability for all expenses incurred by or on behalf of each person, including each insured, who sustains bodily injury, sickness, disease or death as the result of any one accident.

6. Severability of Interests—Coverages A and B: The term "the insured" is used severally and not collectively, but the inclusion herein of more than one insured shall not operate to increase the limits of the company's liability.

7. Action Against Company—Coverages A and B: No action shall lie against the company unless, as a condition precedent thereto, the insured shall have fully complied with all the terms of this policy, nor until the amount of the insured's obligation to pay shall have been finally determined either by judgment against the insured after actual trial or by written agreement of the insured, the claimant and the company.

Any person or organization or the legal representative thereof who has secured such judgment or written agreement shall thereafter be entitled to recover under this policy to the extent of the insurance afforded by this policy. Nothing contained in this policy shall give any person or organization any right to join the company as a co-defendant in any action against the insured to determine the insured's liability.

Bankruptcy or insolvency of the insured or of the insured's estate shall not relieve the company of any of its obligations hereunder.

8. Action Against Company—Coverage C: No action shall lie against the company unless, as a condition precedent thereto, there shall have been full compliance with all the terms of this policy, nor until thirty days after the required proofs of claim have been filed with the company.

9. Financial Responsibility Laws—Coverages A and B: When this policy is certified as proof of financial responsibility for the future under the provisions of the motor vehicle financial responsibility law of any state or province, such insurance as is afforded by this policy for bodily injury liability or for property damage liability shall comply with the provisions of such law which shall be applicable with respect to any such liability arising out of the ownership, maintenance or use of the automobile during the policy period, to the extent of the coverage and limits of liability required by such law, but in no event in excess of the limits of liability stated in this policy. The insured agrees to reimburse the company for any payment made by the company which it would not have been obligated to make under the terms of this policy except for the agreement contained in this paragraph.

10. Assault and Battery—Coverages A and B: Assault and battery shall be deemed an accident unless committed by or at the direction of the insured.

11. Medical Reports; Proof and Payment of Claim—Coverage C: As

of the appraisal and umpire.

The company shall not be held to have waived any of its rights by any act relating to appraisal.

14. Limit of Liability; Settlement Options; No Abandonment—Coverages D, E, F, G, H and I: The limit of the company's liability for loss shall not exceed either (1) the actual cash value of the automobile, or if the loss is of a part thereof the actual cash value of such part, at time of loss or (2) what it would then cost to repair or replace the automobile or such part thereof with other of like kind and quality, with deduction for depreciation, or (3) the applicable limit of liability stated in the declarations.

The company may pay for the loss in money or may repair or replace the automobile or such part thereof, as aforesaid, or may return any stolen property with payment for any resultant damage thereto at any time before the loss is paid or the property is so replaced, or may take all or such part of the automobile at the agreed or appraised value but there shall be no abandonment to the company.

15. Automatic Reinstatement—Coverages D, E, F, G, H and I: When the automobile is damaged, whether or not such damage is covered under this policy, the liability of the company shall be reduced by the amount of such damage until repairs have been completed, but shall then attach as originally written without additional premium.

16. Payment for Loss; Action Against Company—Coverages D, E, F, G, H, I and J: Payment for loss may not be required nor shall action lie against the company unless, as a condition precedent thereto, the named insured shall have fully complied with all the terms of this policy nor until thirty days after proof of loss is filed and the amount of loss is determined as provided in this policy.

17. No Benefit to Bailee—Coverages D, E, F, G, H, I and J: The insurance afforded by this policy shall not enure directly or indirectly to the benefit of any carrier or bailee liable for loss to the automobile.

18. Assistance and Cooperation of the Insured—Coverages A, B, D, E, F, G, H, I and J: The insured shall cooperate with the company and, upon the company's request, shall attend hearings and trials and shall assist in effecting settlements, securing and giving evidence, obtaining the attendance of witnesses and in the conduct of suits. The insured shall not, except at his own cost, voluntarily make any payment, assume any obligation or incur any expense other than for such immediate medical and surgical relief to others as shall be imperative at the time of accident.

19. Subrogation—Coverages A, B, D, E, F, G, H, I and J: In the event of any payment under this policy, the company shall be subrogated to all the insured's rights of recovery therefor against any person or organization and the insured shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The insured shall do nothing after loss to prejudice such rights.

20. Other Insurance—Coverages A, B, D, E, F, G, H, I and J: If the insured has other insurance against a loss covered by this policy the company shall not be liable under this policy for a greater proportion of such loss than the applicable limit of liability stated in the declarations bears to the total applicable limit of liability of all valid and collectible insurance against such loss; provided, however, under coverages A and B the insurance with respect to temporary substitute automobiles under Insuring Agreement IV or other automobiles under Insuring Agreement V shall be excess insurance over any other valid and collectible insurance.

21. Other Insurance—Coverage C: Under division 1 of coverage C, the insurance with respect to temporary substitute automobiles under Insuring Agreement IV or other automobiles under Insuring Agreement V shall be excess insurance over any other valid and collectible

soon as practicable the injured person or someone on his behalf shall give to the company written proof of claim, under oath if required, and shall, after each request from the company, execute authorization to enable the company to obtain medical reports and copies of records. The injured person shall submit to physical examination by physicians selected by the company when and as often as the company may reasonably require.

The company may pay the injured person or any person or organization rendering the services and such payment shall reduce the amount payable hereunder for such injury. Payment hereunder shall not constitute an admission of liability of any person or, except hereunder, of the company.

12. Named Insured's Duties When Loss Occurs—Coverages D, E, F, G, H, I and J: When loss occurs, the named insured shall:

(a) protect the automobile, whether or not the loss is covered by this policy, and any further loss due to the named insured's failure to protect shall not be recoverable under this policy; reasonable expense incurred in affording such protection shall be deemed incurred at the company's request;

(b) give notice thereof as soon as practicable to the company or any of its authorized agents and also, in the event of theft, larceny, robbery or pilferage, to the police but shall not, except at his own cost, offer or pay any reward for recovery of the automobile;

(c) file proof of loss with the company within sixty days after the occurrence of loss, unless such time is extended in writing by the company, in the form of a sworn statement of the named insured setting forth the interest of the named insured and of all others in the property affected, any encumbrances thereon, the actual cash value thereof at time of loss, the amount, place, time and cause of such loss, the amount of rental or other expense for which reimbursement is provided under this policy, together with original receipts therefor, and the description and amounts of all other insurance covering such property.

Upon the company's request, the named insured shall exhibit the damaged property to the company and submit to examinations under oath by anyone designated by the company, subscribe the same and produce for the company's examination all pertinent records and sales invoices, or certified copies if originals be lost, permitting copies thereof to be made, all at such reasonable times and places as the company shall designate.

13. Appraisal—Coverages D, E, F, G, H, I and J: If the named insured and the company fail to agree as to the amount of loss, each shall, on the written demand of either, made within sixty days after receipt of proof of loss by the company, select a competent and disinterested appraiser, and the appraisal shall be made at a reasonable time and place. The appraisers shall first select a competent and disinterested umpire, and failing for fifteen days to agree upon such umpire, then, on the request of the named insured or the company, such umpire shall be selected by a judge of a court of record in the county and state in which such appraisal is pending. The appraisers shall then appraise the loss, stating separately the actual cash value at the time of loss and the amount of loss, and failing to agree shall submit their differences to the umpire. An award in writing of any two shall determine the amount of loss. The named insured and the company shall each pay his or its chosen appraiser and shall bear equally the other expenses

automobile medical payments insurance.

Under division 2 of coverage C, the insurance shall be excess over any other valid and collectible automobile medical payments insurance available to an insured under any other policy.

22. Changes: Notice to any agent or knowledge possessed by any agent or by any other person shall not effect a waiver or a change in any part of this policy or estop the company from asserting any right under the terms of this policy; nor shall the terms of this policy be waived or changed, except by endorsement issued to form a part of this policy.

23. Assignment: Assignment of interest under this policy shall not bind the company until its consent is endorsed hereon; if, however, the named insured shall die, this policy shall cover (1) the named insured's spouse, if a resident of the same household at the time of such death, and legal representative as named insureds, and (2) under coverages A and B, subject otherwise to the provisions of Insuring Agreement III, any person having proper temporary custody of the automobile, as an insured, and under division 1 of coverage C while the automobile is used by such person, until the appointment and qualification of such legal representative; provided that notice of cancelation addressed to the insured named in Item I of the declarations and mailed to the address shown in this policy shall be sufficient notice to effect cancelation of this policy.

24. Cancelation: This policy may be canceled by the named insured by surrender thereof to the company or any of its authorized agents or by mailing to the company written notice stating when thereafter the cancelation shall be effective. This policy may be canceled by the company by mailing to the named insured at the address shown in this policy written notice stating when not less than ten days thereafter such cancelation shall be effective. The mailing of notice as aforesaid shall be sufficient proof of notice. The time of the surrender or the effective date and hour of cancelation stated in the notice shall become the end of the policy period. Delivery of such written notice either by the named insured or by the company shall be equivalent to mailing.

If the named insured cancels, earned premium shall be computed in accordance with the customary short rate table and procedure. If the company cancels, earned premium shall be computed pro rata. Premium adjustment may be made either at the time cancelation is effected or as soon as practicable after cancelation becomes effective, but payment or tender of unearned premium is not a condition of cancelation.

25. Purposes of Use: (a) The term "pleasure and business" is defined as personal, pleasure, family and business use. (b) The term "commercial" is defined as use principally in the business occupation of the named insured as stated in the declarations, including occasional use for personal, pleasure, family and other business purposes. (c) Use of the automobile for the purposes stated includes the loading and unloading thereof.

26. Terms of Policy Conformed to Statute: Terms of this policy which are in conflict with the statutes of the State wherein this policy is issued are hereby amended to conform to such statutes.

27. Declarations: By acceptance of this policy the named insured agrees that the statements in the declarations are his agreements and representations, that this policy is issued in reliance upon the truth of such representations and that this policy embodies all agreements existing between himself and the company or any of its agents relating to this insurance.

In Witness Whereof, the company has caused this policy to be executed and attested, but this policy shall not be valid unless countersigned by a duly authorized representative of the company.

William H. Dunett *Secretary* Fred A. Parnell *President*

SHORT RATE TABLE (For One Year Policies)

Days Policy in Force	Per Cent of 1 Yr. Prem.
1	5%
2	7
3	8
4	9
5	10
6	11
7	12
8	13
9	14
10	15
11	16
12	17
13	18
14	19
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18	23
19	24
20	25
21	26
22	27
23	28
24	29
25	30
26	31
27	32
28	33
29	34
30 (1 mo.)	35
31	36
32	37
33	38
34	39
35	40
36	41
37	42
38	43
39	44
40	45
41	46
42	47
43	48
44	49
45 (2 mos.)	50
46	51
47	52
48	53
49	54
50	55
51	56
52	57
53	58
54	59
55	60
56	61
57	62
58	63
59	64
60 (3 mos.)	65
61	66
62	67
63	68
64	69
65	70
66	71
67	72
68	73
69	74
70	75
71	76
72	77
73	78
74	79
75	80
76	81
77	82
78	83
79	84
80 (4 mos.)	85
81	86
82	87
83	88
84	89
85	90
86	91
87	92
88	93
89	94
90 (5 mos.)	95
91	96
92	97
93	98
94	99
95	100
96	101
97	102
98	103
99	104
100	105
101	106
102	107
103	108
104	109
105 (6 mos.)	110
106	111
107	112
108	113
109	114
110	115
111	116
112	117
113	118
114	119
115	120
116	121
117	122
118	123
119	124
120 (7 mos.)	125
121	126
122	127
123	128
124	129
125	130
126	131
127	132
128	133
129	134
130 (8 mos.)	135
131	136
132	137
133	138
134	139
135	140
136	141
137	142
138	143
139	144
140	145
141	146
142	147
143	148
144	149
145 (9 mos.)	150
146	151
147	152
148	153
149	154
150	155
151	156
152	157
153	158
154	159
155	160
156	161
157	162
158	163
159	164
160	165
161	166
162	167
163	168
164	169
165 (10 mos.)	170
166	171
167	172
168	173
169	174
170	175
171	176
172	177
173	178
174	179
175	180
176	181
177	182
178	183
179	184
180 (11 mos.)	185
181	186
182	187
183	188
184	189
185	190
186	191
187	192
188	193
189	194
190	195
191	196
192	197
193	198
194	199
195 (12 mos.)	200
196	201
197	202
198	203
199	204
200	205
201	206
202	207
203	208
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357	362
358	363
359	364
360	365
361	366
362	367
363	368
364	369
365 (12 mos.)	100

DM 67 24 44

COMPANY COPY

AMERICAN PROPERTY INSURANCE COMPANY
COMBINATION AUTOMOBILE

Renewal
Agent
Registered

Agency Code	N or R	Eff. Date	Term	Exp'n Date	State

Items Inc.	TRANS.	LOCATION City or Reins. Co.	LOCATION Terr.	LINE	CLASS	AGE	EXPOS.	B.I. Lim.	B.I. Amount	P.D. Lim.	P.D. Amount	M.P. Lim.	M.P. Amount	Comp F & T Towing Code	Comp F & T Towing Amount	COLLISION & MISC. Cov. Code	COLLISION & MISC. Amount	TOTAL	COMM. RATE
	10			H															22.5
				H							AUDIT				DATE				22.5

Item 1. Named Insured and Address:
Sojouner Motor Fleet, Inc.
89 1/2 Raymond Street, N.W.
Atlanta, Fulton, Georgia

Item 2. Policy Period: (Mo. Day Yr.) (12 Months)
From 9/21/64 to 9/21/65
12:01 A.M., standard time at the address of the named insured as stated herein.

POL. REG. ☐ ☐ CR.
INITIAL AUDIT ☑ ☑ ADD. PTS. ☐ ☑
APP. ☐ ☐ J-RATE ☐ ☐
M. V. R. ☐ ☐ SGND. ENDT. ☐ ☐
REJECTION UM. ☐ ☐
OTHER See memo

The automobile will be principally garaged in the above town or city, county and state, unless otherwise stated herein:

Occupation of the named insured is **Publishers**

NOTED
NOV 16 1964
B. H.

Designation of insured for purposes of division 2 of coverage C, if required by Insuring Agreement III:

Item 3. The insurance afforded is only with respect to such and so many of the following coverages as are indicated by specific premium charge or charges. The limit of the company's liability against each such coverage shall be as stated herein, subject to all the terms of this policy having reference thereto.

	20 thousand dollars each person		A	Bodily Injury Liability
5125.00	20 thousand dollars each accident			
3321.00	5 thousand dollars each accident		B	Property Damage Liability
	each person		C	Automobile Medical Payments
			D	Comprehensive—Loss of or Damage to the Automobile, except by Collision or Upset but including Fire, Theft and Windstorm
	Actual Cash Value less deductible		E	Collision or Upset
	$206.00 each +10.00 UMC		F	Fire, Lightning and Transportation
			G	Theft (Broad Form)
			H	Windstorm, Hail, Earthquake or Explosion
			I	Combined Additional Coverage
	for each disablement		J	Towing and Labor Costs
11,443.00	UMC Rejected			
~~8446.00~~	Total Premium Forms and endorsements made part of policy at time of issue:			

Item 4. Description of the automobile and facts respecting its purchase by the named insured 3-01-4-0

Year of Model	Trade Name	Model	Body Type; Truck Size; Truck Load Capacity; Tank Gallonage Capacity; or Bus Seating Capacity	Identification Number (I) Serial Number (S) Motor Number (M)	Number of Cylinders	F.O.B. List Price or Delivered Price at Factory	Class & Rating Symbol	Actual Cost When Purchased Including Equipment	Purchased Month, Year	Purchased New or Used
SEE SCHEDULE OF AUTOS AND DRIVERS ATTACHED										

Any loss under Coverages D, E, F, G, H and I is payable as interest may appear to the named insured and
The automobile is unencumbered unless otherwise stated herein. The encumbrance, number and amount of each installment payment, due date and amount of final installment are:

Item 5. The purposes for which the automobile is to be used are "pleasure and business," unless otherwise stated herein:

Item 6. Unless otherwise stated herein: (a) If no automobile is described above, the total number of private passenger automobiles owned on the effective date of this policy by the named insured and by his spouse, if a resident of the same household, does not exceed one. (b) Except with respect to bailment lease, conditional sale, purchase agreement, mortgage or other encumbrance, the named insured is the sole owner of the automobile. (c) During the past three years no insurer has canceled insurance, issued to the named insured, similar to that afforded hereunder:

Countersigned: September 22, 1964 at Decatur, Georgia

OKD6019DM Cas. Und. By _____ 7

60-485 CASUALTY UNDERWRITERS

SCHEDULE OF AUTOS AND DRIVERS

ENDORSEMENT

AUTOMOBILES		DRIVERS
1955 Willis Station Wagon 2 Door	M#5472710450	Filas Norman
1957 Plymouth Sedan	M#2086644	Joe Light
1961 Nash Rambler	M#142623	Bill Hansen
1959 Plymouth Convertible	M#M258207308	Bill Hansen
1956 Cadillac Hard-Top	M#5662-020374	Betty Carman
1956 Chevrolet 2 Door	M#V56B124605	Shessalonia G.Johnson
1955 Chevrolet 2 Door	M#55V050722	Cordell Reagon
1956 Pontiac 4 Door	M#C-755H1650	Tom Brown
1962 Chevrolet Corvair 2 Door	M#2052W224976	Ron Bridgeforth
1957 Chevrolet 2 Door	M#A57M-199576	Cleveland Sellers
1963 Valient 4 Door	M#1132618793	Annie Moore
1955 Chrysler 4 Door	M#C5512110	Cleveland Sellers
1958 Chevrolet Panel Truck	M#3A58F109056	Ralph Featherstone
1963 Valiant 2 Door	M#37111215	Douglas Smith
1959 English Ford Consul 2 Door	M#204E145072	Ruth Howard
1954 Pontiac 4 Door	M#P8ZH19007	James Henry
1957 Volkswagen 2 Door	M#1454585	James A. Monsonis
1953 Pontiac 4 Door	M#L8XH30634	John Battiste
1957 Oldsmobile 4 Door	M#A253110	Mary Ellickson
1958 Chevrolet 2 Door	M#B58F207817	Fred Mangrum
1964 Plymouth 2 Door	M#2141-213315	Unita Blackwell
1964 Plymouth 2 Door	M#2141-254323	Penny Patch
1964 Plymouth 4 Door	M#2141-254293	John Harris
1964 Plymouth 2 Door	M#2147-150372	Cleveland Sellers
1964 Plymouth 4 Door	M#2141-207755	Joe Lewis Spigler
1964 Plymouth 4 Door	M#3141-245073	Stockley Carmichael
1964 Plymouth 2 Door	M#2141-276888	Don White
1964 Plymouth 2 Door	M#2141-278667	Willie McGee
1964 Plymouth 2 Door	M#2141-278627	James Jones
1964 Plymouth 4 Door	M#3141-249039	Ivanhoe Donalson
1964 Plymouth 4 Door	M#2147-134359	Carver Beblett
1964 Plymouth 2 Door	M#2141-241684	Theodius Hewitt
1964 Plymouth 4 Door	M#4141-255617	Francis Mitchell
1964 Plymouth 4 Door	M#2541-248316	John Oneal
1964 Plymouth Valiant 4 Door	M#1547-174673	Henry Bailey
1964 Plymouth 4 Door	M#2147-126316	Murial Tillinghast
1964 Plymouth 2 Door	M#2141-321259	Ralph Featherstone
1964 Plymouth 4 Door	M#2141-245692	Stuart Ewing
1964 Plymouth 2 Door	M#2141-254588	Stokeley Carmichael
1955 Chevrolet 1/2 Ton	M#0948437F54X	Clifford A. Vaughf
1957 Volkswagen 2 Door	M#491805	Ed Hamlett

This endorsement forms a part of Policy DM672444 issued to Sojouner Motor Fleet, Inc. and is effective from 9/21/64 12:01 A. M. Standard Time

Countersigned by:

Issued by: AMERICAN LIBERTY INSURANCE COMPANY

Paul A. Palmer President 9/22/64

Authorized Agent
Casualty Underwriters, Inc.

18

ENDORSEMENT

In consideration of an Additional Premium of $347.00 ($201.00 B.I., $130.00 P.D. and $16.00 UMC) it is agreed and understood that the following cars are added:

#56	1960	Ford	Station Wagon	#0F62X100248
#57	1961	Valient	2 Door	#1116134008

NOTED

DEC 29 1964

B. H.

This endorsement forms a part of Policy DM 672444 issued to Sojourner Motor Fleet, Inc. and is effective from 12/2/64 12:01 A. M. Standard Time

Countersigned by:

Issued by: AMERICAN LIBERTY INSURANCE COMPANY

President

Authorized Agent

Casualty Underwriters, Inc.

200

ENDORSEMENT

In consideration of an Additional Premium of $722.00, it is agreed and understood that the following vehicles are hereby added to this policy effective November 20, 1964.

#52	1963	Valient	#37111215
#53	1965	Plymouth Belevedere	#R157-109935
#54	1965	Dodge Panel	#1261-376137
#55	1965	Valient	#1157-113222

ADDITIONAL PREMIUM

B.I.	$418.00
P.D.	271.00
UMC	33.00
	$722.00

NOTED

DEC 29 1964

B. H.

This endorsement forms a part of Policy DM 672444 issued to Sojouner Motor Fleet, Inc. and is effective from 11/20/64 12:01 A. M. Standard Time

Countersigned by:

Issued by: AMERICAN LIBERTY INSURANCE COMPANY

Paul C. Carney President

12/2/64 Authorized Agent Casualty Underwriters, Inc.

A200

ENDORSEMENT

10

In consideration of a Return Premium of $180.00 ($104.00 B.I., $68.00 P.D. and $8.00 UMC) it is agreed and understood that Item # 52 - 1963 Valient #37111215 is eliminated effective November 20, 1964.

NOTED

DEC 29 1964

B. H.

This endorsement forms a part of Policy DM 672444 issued to Sojouner Motor Fleet, Inc. and is effective from 11/20/64 12:01 A. M. Standard Time

Countersigned by:

Issued by: AMERICAN LIBERTY INSURANCE COMPANY

Paul C. Carney

Authorized Agent Casualty Underwriters, Inc.

10

ENDORSEMENT

In consideration of an Additional Premium of $190.00, it is agreed and understood that the following vehicle is hereby added to this policy effective 11/4/64.

#51 1960 Falcon #OK215222190

ADDITIONAL PREMIUM

B.I.	$110.00
P.D.	71.00
	9.00
	$190.00

NOTED

DEC 29 1964

B. H.

This endorsement forms a part of Policy DM 672444 issued to Sojouner Motor Fleet, Inc. and is effective from 11/4/64 12:01 A. M. Standard Time

Countersigned by:

Issued by: AMERICAN LIBERTY INSURANCE COMPANY

President

Authorized Agent

12/2/64 Casualty Underwriters, Inc.

ENDORSEMENT

In conside. an Additional Premium of $195.00, it is agreed and understood that the following vehicle is hereby added to this policy effective October 27, 1964.

#47 1965 Plymouth 4 Door Belvedere #3157115634

ADDITIONAL PREMIUM

B.I.	$113.00
P.D.	73.00
UMC	9.00
	$195.00

NOTED

DEC 29 1964

B. H.

This endorsement forms a part of Policy DM 672444 issued to Sojouner Motor Fleet, Inc. and is effective from 10/27/64 12:01 A. M. Standard Time

Countersigned by:

Issued by: AMERICAN LIBERTY INSURANCE COMPANY

President

Authorized Agent

12/2/64 Casualty Underwriters, Inc.

ENDORSEMENT

In consideration of a Return Premium of $180.00 ($104.00 B.I., $68.00 P.D. and $8.00 UMC) it is agreed and understood that Item #14 - 1963 Valiant #37111215 is eliminated effective November 20, 1964.

NOTED

DEC 29 1964

B. H.

This endorsement forms a part of Policy DM 672444 issued to Sojouner Motor Fleet and is effective from 11/20/64 12:01 A. M. Standard Time

Countersigned by:

Issued by: AMERICAN LIBERTY INSURANCE COMPANY

President

Authorized Agent

Casualty Underwriters, Inc.

ENDORSEMENT

In consideration of an Additional Premium of $190.00, it is agreed and understood that the following vehicles are hereby added to this policy effective November 5, 1964.

#48	1958	Chevrolet Station Wagon	#C58J164799
#49	1965	Ford Station Wagon	#5A74C113033
#50	1965	Plymouth Valient	#1157113029

It is agreed and understood that the following vehicles are hereby eliminated from this policy effective November 5, 1964.

#18	1953	Pontiac	#L84H30634
#2	1957	Plymouth	#2086644

ADDITIONAL PREMIUM: B.I. $110.00, P.D. $71.00, UMC $9.00 - TOTAL $190.00

This endorsement forms a part of Policy DM 672444 issued to Sojouner Motor Fleet, Inc. and is effective from 11/5/64 12:01 A. M. Standard Time

NOTED

DEC 29 1964

Countersigned by:

Issued by: AMERICAN LIBERTY INSURANCE COMPANY

President

12/2/64

Authorized Agent

Casualty Underwriters, Inc.

3

ENDORSEMENT

[illegible] of an Additional Premium of $991.00, it is [illegible] that the following cars and drivers are [illegible] policy:

Description of Vehicle		Driver
1964 Plymouth Valient 4 Dr.	#114721630	Jessie Harrison
1965 Plymouth Belvedere 2 Dr.	#3157101259	Don Harris
1964 Plymouth Valient 2 Dr.	#1147205008	James Jones
1964 Plymouth Valient 4 Dr.	#1142721241	Bill Hansen
1964 Plymouth Sta.Wagon	#Z547128571	Rev.Thomas L. Brown

ADDITIONAL PREMIUM

B.I.	$601.00
P.D.	$390.00
	$991.00

NOTED
DEC 29 1964
B. H.

This endorsement forms a part of Policy DM 672444 issued to Sojouner Motor Fleet, Inc. and is effective from 10/5/64 12:01 A. M. Standard Time

Countersigned by:

Issued by: AMERICAN LIBERTY INSURANCE COMPANY

10/21/64 President

Authorized Agent
Casualty Underwriters, Inc.

ENDORSEMENT

In consideration of the premium charged, it is agreed and understood that the named insured's address is hereby amended to:

8 1/2 Raymond Street, N.W.
Atlanta, Fulton, Georgia

NOTED
DEC 29 1964
B. H.

This endorsement forms a part of Policy DM 672444 issued to Sojouner Motor Fleet, Inc. and is effective from 9/21/64 12:01 A. M. Standard Time

Countersigned by:

Issued by: AMERICAN LIBERTY INSURANCE COMPANY

12/2/64 President

Authorized Agent
Casualty Underwriters,

BASIC — BASIC COMBINATION — COMPREHENSIVE — COMPREHENSIVE LIABILITY (GENERAL-AUTOMOBILE) GARAGE

AUTOMOBILE

AL 6650a-X
(Ed. 5-64)

A 825a

PROTECTION AGAINST UNINSURED MOTORISTS INSURANCE

(Automobile Bodily Injury Liability and Property Damage Liability)
(Specified Car Basis)
(Georgia)

This endorsement, effective 9/21/64 (12:01 A. M., standard time), forms a part of policy No. DM672444

issued to Sojouner Motor Fleet, Inc.

by AMERICAN LIBERTY INSURANCE COMPANY

NOTED

DEC 29 1964

B. H.

SCHEDULE

Limits of Liability:

Bodily Injury $10,000 each person; $20,000 each accident

Property Damage $5,000 each accident

The advance premium for this endorsement is $ 460.00

The company agrees with the named insured in consideration of the payment of the premium for this endorsement and subject to the limits of liability, exclusions, conditions and other terms of this endorsement and to the applicable terms of the policy:

INSURING AGREEMENTS

I. Damages for Bodily Injury and Property Damage Caused by Uninsured Automobiles: To pay all sums which the insured or his legal representative shall be legally entitled to recover as damages from the owner or operator of an uninsured automobile because of:

(a) bodily injury, sickness or disease, including death resulting therefrom, hereinafter called "bodily injury", sustained by the insured;

(b) injury to or destruction of an insured automobile and property owned by the insured which is contained therein, hereinafter called "property damage";

caused by accident and arising out of the ownership, maintenance or use of such uninsured automobile.

No default judgment against any known person or organization alleged to be legally responsible for the bodily injury or property damage shall be conclusive, as between the insured and the company, as to the establishment of legal liability or of the amount of damages to which the insured is legally entitled.

II. Definitions:

(a) **Insured.** The unqualified word "insured" means:

(1) the named insured;

(2) any person while occupying an insured automobile; and

(3) any person, with respect to damages he is entitled to recover because of bodily injury to which this endorsement applies sustained by an insured under (1) or (2) above.

The insurance applies separately with respect to each insured under this endorsement, but neither this provision nor application of the insurance to more than one insured shall operate to increase the limits of the company's liability.

(b) **Insured Automobile.** The term "insured automobile" means:

(1) an automobile owned by the named insured and registered in Georgia;

(2) any automobile owned by the named insured to which is attached Georgia dealer's license plates issued to the named insured;

and to which the liability coverage of the policy applies, while such automobile is being used by or with the permission of the named insured as stated in the policy.

(c) **Uninsured Automobile.** The term "uninsured automobile" means:

(1) an automobile with respect to the ownership, maintenance or use of which there is, in at least the amounts specified in Section 56-407A of the Georgia Insurance Code, neither (i) cash or securities on file with the Georgia Director of Public Safety nor (ii) a bodily injury and property damage liability bond or insurance policy, applicable at the time of the accident with respect to any person or organization legally responsible for the use of such automobile, or there is a bodily injury and property damage liability insurance policy applicable at the time of the accident but the company writing the same either has legally denied coverage thereunder or becomes insolvent within one year after such accident; or

(2) a hit-and-run automobile as defined;

but the term "uninsured automobile" shall not include:

(i) an automobile defined herein as an "insured automobile";

(ii) an automobile owned by or furnished for the regular use of the named insured;

(iii) an automobile which is owned or operated by a self-insurer within the meaning of any motor vehicle financial responsibility law, motor carrier law or any similar law;

(iv) an automobile which is owned by the United States of America, Canada, a state, a political subdivision of any such government or an agency of any of the foregoing;

(v) a land motor vehicle or trailer, if operated on rails or crawler-treads or while located for use as a residence or premises and not as a vehicle; or

(vi) a farm type tractor or equipment designed for use principally off public roads, except while actually upon public roads.

(d) **Hit-and-Run Automobile:** The term "hit-and-run automobile" means an automobile which causes bodily injury to an insured or property damage arising out of physical contact of such automobile with an insured automobile, provided: (i) there cannot be ascertained the identity of either the operator or the owner of such "hit-and-run automobile"; (ii) the insured or someone on his behalf shall have reported the accident within 10 days or as soon as practicable to the Georgia Director of Public Safety, and shall have filed with the company within 30 days thereafter a statement under oath that the insured or his legal representative has a cause or causes of action arising out of such accident for damages against a person or persons whose identity is unascertainable, and setting forth the facts in support thereof; and (iii) at the company's request, the insured or his legal representative makes available for inspection the automobile which the insured was occupying at the time of the accident.

(e) **Occupying.** The word "occupying" means in or upon or entering into or alighting from.

(f) **State.** The word "state" includes the District of Columbia, a territory or possession of the United States, and a province of Canada.

III. Policy Period, Territory: This endorsement applies only to accidents which occur on and after the effective date hereof, during the policy period and within the United States of America, its territories or possessions, or Canada.

EXCLUSIONS

This endorsement does not apply:

(a) to the first two hundred and fifty dollars of the total amount of all property damage as the result of any one accident;

(b) to bodily injury to an insured or injury to or destruction of property of an insured with respect to which such insured, his legal representative or any person entitled to payment under this coverage shall, without written consent of the company, make any settlement with any person or organization who may be legally liable therefor;

(c) so as to inure directly or indirectly to the benefit of any workmen's compensation or disability benefits carrier or any person or organization qualifying as a self-insurer under any workmen's compensation or disability benefits law or any similar law;

(d) so as to inure directly or indirectly to the benefit of any insurer of property.

(over)

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CONDITIONS

1. Policy Provisions: None of the Insuring Agreements, Exclusions, Conditions or Other Provisions of the policy shall apply to the insurance afforded by this endorsement except the Conditions "Notice" or "Notice of Accident," "Subrogation," "Changes," "Assignment," "Cancelation" and "Declarations"

2. Premium: If during the policy period the number of automobiles owned by the named insured and registered or principally garaged in Georgia or the number of Georgia dealer's license plates issued to the named insured changes, the named insured shall notify the company during the policy period of any change and the premium shall be adjusted in accordance with the manuals in use by the company. If the earned premium thus computed exceeds the advance premium paid, the named insured shall pay the excess to the company; if less, the company shall return to the named insured the unearned portion paid by such insured.

3. Proof of Claim: As soon as practicable, the insured or other person making claim shall give to the company written proof of claim, under oath if required, including full particulars of the nature and extent of the injuries, treatment, and other details entering into the determination of the amount payable hereunder. Proof of claim shall be made upon forms furnished by the company unless the company shall have failed to furnish such forms within 15 days after receiving notice of claim.

The injured person shall submit to physical examinations by physicians selected by the company when and as the company may reasonably require and he, or in the event of his incapacity his legal representative, or in the event of his death his legal representative or the person or persons entitled to sue therefor, shall upon each request from the company execute authorization to enable the company to obtain medical reports and copies of records.

The insured or other person making claim for damage to property shall file proof of loss with the company within sixty days after the occurrence of loss, unless such time is extended in writing by the company, in the form of a sworn statement setting forth the interest of the insured and of all others in the property affected, any encumbrances thereon, the actual cash value thereof at time of loss, the amount, place, time and cause of such loss, and the description and amounts of all other insurance covering such property. Upon the company's request, the insured shall exhibit the damaged property to the company.

4. Assistance and Cooperation of the Insured: After notice of claim under this endorsement, the company may require the insured to take such action as may be necessary or appropriate to preserve his right to recover damages from any person or organization alleged to be legally responsible for the bodily injury or property damage.

5. Notice of Legal Action: If, before the company makes payment of loss hereunder, the insured or his legal representative shall institute any legal action for bodily injury or property damage against any person or organization legally responsible for the use of an automobile involved in the accident, a copy of the summons and complaint or other process served in connection with such legal action shall be forwarded immediately to the company by the insured or his legal representative.

6. Limits of Liability:

(a) The limit of bodily injury liability stated in the schedule as applicable to "each person" is the limit of the company's liability for all damages including damages for care or loss of services, because of bodily injury sustained by one person as the result of any one accident and, subject to the above provision respecting each person, the limit of such liability stated in the schedule as applicable to "each accident" is the total limit of the company's liability for all damages, including damages for care or loss of services, because of bodily injury sustained by two or more persons as the result of any one accident.

(b) The limit of property damage liability stated in the schedule as applicable to "each accident" is the total limit of the company's liability for all damages arising out of injury to or destruction of all property of one or more insureds as the result of any one accident.

(c) If claim is made under this endorsement and claim is also made against any person who is an insured under the Bodily Injury Liability or Property Damage Liability coverages of the policy because of bodily injury or property damage sustained in an accident by a person who is an insured under this endorsement:

(1) any payment made under this endorsement to or for any such person shall be applied in reduction of any amount which he may be entitled to recover from any person who is an insured under the Bodily Injury Liability or Property Damage Liability coverages; and

(2) any payment made under the Bodily Injury Liability or Property Damage Liability coverages to or for any such person shall be applied in reduction of any amount which he may be entitled to recover under this endorsement.

(d) Any amount payable to an insured under the terms of this endorsement shall be reduced by (1) all sums paid to such insured for bodily injury or property damage by or on behalf of the person legally liable therefor and (2) the amount paid and the present value of all amounts payable to such an insured under any workmen's compensation law, exclusive of non-occupational disability benefits.

7. Other Insurance: With respect to bodily injury to an insured, if the insured has other similar insurance available to him against a loss covered by this endorsement, the company shall not be liable under this endorsement for a greater proportion of such loss than the applicable limit of liability hereunder bears to the total applicable limits of liability of all valid and collectible insurance against such loss.

With respect to property damage, the insurance afforded under this endorsement shall be excess insurance over any other valid and collectible insurance against such property damage.

8. Payment of Loss by the Company: Any amount due hereunder is payable to the insured or his legal representative.

9. Action Against Company: No action shall lie against the company unless, as a condition precedent thereto, the insured or his legal representative has fully complied with all the terms of this endorsement.

.....

Authorized Representative

CONDITIONS

1. Policy Provisions: None of the Insuring Agreements, Exclusions, Conditions or Other Provisions of the policy shall apply to the insurance afforded by this endorsement, except the Conditions "Notice" or "Notice of Accident," "Subrogation," "Changes," "Assignment," "Cancellation" and "Declarations."

2. Premium: If during the policy period the number of automobiles owned by the named insured and registered or principally garaged in Georgia, or the number of Georgia dealer's license plates issued to the named insured changes, the named insured shall notify the company during the policy period of any change and the premium shall be adjusted in accordance with the manuals in use by the company. If the earned premium this company's liability for all damages arising out of the ownership, maintenance or use of the automobile involved in the accident, a copy of the summons and complaint or other process served in connection with such legal action shall be forwarded immediately to the company by the insured or his legal representative.

6. Limits of Liability:

(a) The limit of liability stated in the schedule as applicable to "each person" is the limit of the company's liability for all damages arising out of bodily injury sustained by one person as the result of any one accident; subject to the provision respecting each person, the limit of liability stated in the schedule as applicable to "each accident" is the total limit of the company's liability for all damages for care or loss of services, because of bodily injury sustained by two or more persons as the result of any one accident.

(b) The limit of property damage liability stated in the schedule as applicable to "each accident" is the total limit of the company's liability for all damages arising out of the ownership, maintenance or use of the automobile to or destruction of all property of one or more persons as the result of any one accident.

(c) If claim is made under this endorsement and claim is made against any person who is an insured under the Bodily Injury Liability or Property Damage Liability insurance of this policy because of bodily injury or property damage sustained in an accident by a person who is an insured under this endorsement,

(1) any payment made under this endorsement to such person shall be applied in reduction of any which he may be entitled to recover from a person who is an insured under the Bodily Injury Liability or Property Damage Liability coverages, and

(2) any payment made under the Bodily Injury Liability or Property Damage Liability coverages to or for such person shall be applied in reduction of any amount he may be entitled to recover under this endorsement.

(d) Any amount payable to an insured under this endorsement shall be reduced by (1) all sums payable to the insured for bodily injury or property damage by or on behalf of the person legally liable therefor, and (2) the cash value and the present value of all annuity benefits payable to the insured under any workmen's compensation law or of non-occupational disability benefits.

7. Other Insurance: With respect to bodily injury to or death of the insured or his other similar insurance available to the insured for such a loss covered by this endorsement, the company shall not be liable under this endorsement for a greater proportion of such loss than the applicable limit of liability bears to the total applicable limits of liability of all such similar insurance against such loss.

With respect to property damage, this insurance afforded by this endorsement shall be excess insurance over any other valid and collectible insurance against such property damage.

8. Payment of Loss by the Company: Any amount payable under this endorsement is payable to the insured or his legal representative.

9. Action Against Company: No action shall lie against the company unless, as a condition precedent thereto, the insured or his legal representative has fully complied with all the terms of this endorsement.

Automobile Representative

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

NO. 3018 (S)(C) (Filed Feb 16, 1965)

ARLENA L. SMITH, BOBBIE
L. McMULLEN AND BETTY
L. GOLDY . . . . . PLAINTIFFS

VERSUS

GROVER CLEVELAND HARRISON, STUDENT
NONVIOLENT COORDINATING COMMITTEE,
NATIONAL ASSOCIATION FOR THE "EXHIBIT B"
ADVANCEMENT OF COLORED PEOPLE,
SOUTHERN CHRISTIAN LEADERSHIP
CONFERENCE, COUNCIL OF RACIAL
EQUALITY AND COUNCIL OF FEDERATED
ORGANIZATIONS . . . . . DEFENDANTS

COMPLAINT

I.

Plaintiffs are all adult citizens of the United States. Plaintiff Smith is a resident citizen of St. Louis County, Missouri. Plaintiffs McMullen and Goldy are at the present time residents of Japan; and defendant Harrison is an adult resident of the State of Mississippi, and is available for service of process at 626 State Street, Greenwood, Mississippi.

Defendants, (Student Nonviolent Coordinating Committee, National Association for the Advancement of Colored People, Southern Christian Leadership Conference, Council of Racial Equality and Council of Federated Organizations) have not qualified to do business in the State of Mississippi however,

said defendants have been conducting and carrying on business within the State of Mississippi without filing with the Secretary of State of the State of Mississippi a registered agent for service of process.

Process may be had on these defendants through their lawful agent and attorney for process, the Honorable Heber Ladner, Secretary of State of the State of Mississippi, a resident citizen of Hinds County, State of Mississippi, as made and provided by Section 9352-61 of the Mississippi Code of 1942, annotated, as the last five defendants are non-residents of this state and the matter of this suit arose from Grover Cleveland Harrison's use of the public highways of the State of Mississippi. The matter in controversy exceeds, exclusive of interests and costs, the sum of $10,000.00; there is diversity of citizenship among the parties; the controversy between the parties arose in the Southern District of the State of Mississippi, and therefore this court has jurisdiction of this cause.

II.

On the 19th day of November, 1964, plaintiffs' father and mother, Robert S. Lambert and Lydia Lambert, were in an automobile being driven by Robert S. Lambert and owned by the same. Said automobile was being driven North upon United States Highway 49 in Wiggins, Stone County, Mississippi, and thereupon were hit by an automobile, under the

operation of defendant Grover Cleveland Harrison.

As the direct and proximate result of said collision, plaintiffs' father and mother were injured to the extend that Lydia Lambert died Thursday afternoon shortly after the collision and Robert S. Lambert died from injuries received in this collision the following Saturday afternoon.

III.

Plaintiffs' charge that the accident aforesaid and the resulting deaths were directly and proximately caused by the following acts of negligence of Grover Cleveland Harrison while in the employ of the Student Nonviolent Coordinating Committee, National Association for the Advancement of Colored People, Southern Christian Leadership Conference, Council of Racial Equality and Council of Federated Organizations and acting within the scope of his employment as transportation officer for the defendants, to-wit:

(a) Plaintiffs charge that the defendant Grover Cleveland Harrison was guilty of wanton and willful negligence in the operation of the vehicle he was driving in the following particulars:

(1) In violation of law, he drove the car in a wanton, reckless and negligent manner.

(2) He with wantonness failed to keep his high-powered vehicle under free and easy control

so as to be able to stop in time to avoid killing the defendants' parents.

(3) He operated his vehicle in such a wanton manner that he caused the death of two law abiding citizens, by crossing over the center of said highway and he, with wantonness propelling his automobile into the vehicle driven by Robert S. and Lydia Lambert, the deceased.

IV.

As the direct and proximate result of the wanton negligence complained of above, causing the excruticating pain, suffering and finally the death of Robert S. and Lydia Lambert, the plaintiffs' parents were taken from them by death brought about by the wantonness of Grover Cleveland Harrison.

V.

WHEREFORE plaintiffs bring suit and demand judgment of and from the defendants, jointly and severally, for $500,000.00 actual damages and $1,000,000.00 punitive damages, plus interest and all costs. The defendants will take notice that the plaintiffs demand a jury to determine the issues involved in this controversy at the time of the trial of this cause.

Mrs. Arlena L. Smith
Plaintiff

Mrs. Bobbie L. McMullen
Plaintiff

Mrs. Betty L. Goldy
Plaintiff

James Armstrong Walters
519 North Second Avenue
Columbus, Mississippi

By: S/ James A. Walters
James A. Walters

Attorney for Plaintiffs

...oOo...

NOTE: Motion for an Order Staying any Proceedings Omitted- Filed in its Original Form.

POST OFFICE DEPARTMENT

PENALTY FOR PRIVATE USE TO AVOID PAYMENT OF POSTAGE, $300

POSTMARK OF DELIVERING OFFICE

ATLANTA, GA. APR 19 1965 FEDERAL ANNEX

30

INSTRUCTIONS: Fill in items below and complete instructions on other side, if applicable. Moisten gummed ends, attach and hold firmly to back of article. Print on front of article RETURN RECEIPT REQUESTED.

RETURN TO

REGISTERED NO. 218-66	NAME OF SENDER SECRETARY OF STATE
CERTIFIED NO.	STREET AND NO. OR P. O. BOX P. O. BOX 136
INSURED NO.	CITY, STATE, AND ZIP CODE JACKSON, MISSISSIPPI

POD Form 3811 Sep. 1963

CSS—16—71948-6—F

INSTRUCTIONS TO DELIVERING EMPLOYEE

☐ Deliver *ONLY* to addressee ☐ Show address where delivered

(Additional charges required for these services)

RECEIPT

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SIGNATURE OR NAME OF ADDRESSEE (must always be filled in)

SIGNATURE OF ADDRESSEE'S AGENT, IF ANY

H. M. Dames

DATE DELIVERED 4-19-65	SHOW WHERE DELIVERED (only if requested)

CSS—16—71948-6—F GPO

31

Secretary of State

CORPORATION DIVISION
J. V. CARR, DEPUTY
HARRY L. KELLEY, DEPUTY

FLEETWOOD 5-5351
EXTS. 666 & 667

SECURITIES DIVISION
BEN HAWKINS, DEPUTY

JACKSON, MISSISSIPPI
POST OFFICE BOX 136

Mississippi

Heber Ladner

April 22, 1965

3040

FILED
APR 23 1965
Loyce E. Wharton, Clerk
By

Miss Loryce E. Wharton, Clerk
United States District Court
Biloxi, Mississippi

We are enclosing herewith return receipt signed by Southern Christian Leadership Conference, showing that it has received a copy of the process together with notice of service on the Secretary of State in Cause No. _____, styled American Liberty Insurance Company, Plaintiff, vs. Southern Christian Leadership Conference, Defendant.

Please handle this receipt in accordance with the provisions of the statutes of the State of Mississippi.

Very truly yours,

Heber Ladner

Heber Ladner
Secretary of State

HLK:pj

Enclosure

CC: Messrs. Morse and Morse
Attorneys At Law
Post Office Box 100
Gulfport, Mississippi

POST OFFICE DEPARTMENT
OFFICIAL BUSINESS

PENALTY FOR PRIVATE USE TO AVOID PAYMENT OF POSTAGE, $300

NEW YORK 18, N.Y. APR 19 PM 1965

POSTMARK OF DELIVERING OFFICE
MIDTOWN STA.

32

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RETURN TO

REGISTERED NO.	NAME OF SENDER
218-68	SECRETARY OF STATE
CERTIFIED NO.	STREET AND NO. OR P. O. BOX
	P. O. BOX 136
INSURED NO.	CITY, STATE, AND ZIP CODE
	JACKSON, MISSISSIPPI

CSS—16—71548-6—F

Form 3811 Jan. 1963

INSTRUCTIONS TO DELIVERING EMPLOYEE

☐ Deliver ONLY to addressee ☐ Show address where delivered

(Additional charges required for these services)

RECEIPT

Received the numbered article described on other side.

SIGNATURE OR NAME OF ADDRESSEE (must always be filled in)

NAACP J. Kirkendall

SIGNATURE OF ADDRESSEE'S AGENT, IF ANY

DATE DELIVERED	SHOW WHERE DELIVERED (only if requested)
4/19/65	

CSS—16—71548-5—F GPO

33

Secretary of State

CORPORATION DIVISION
M. CARR, DEPUTY
LY L. KELLEY, DEPUTY

SECURITIES DIVISION
BEN HAWKINS, DEPUTY

JACKSON, MISSISSIPPI
POST OFFICE BOX 136

Mississippi

Heber Ladner

April 22, 1965

FILED
APR 23 1965
Loyce E. Wharton, Clerk
By Mary Lynn Bennett

Miss Loryce E. Wharton, Clerk
United States District Court
Biloxi, Mississippi

We are enclosing herewith return receipt signed by National Assc. for The Advancement Colored People, showing that it has received a copy of the process together with notice of service on the Secretary of State in Cause No. _____, styled American Liberty Ins. Company, Plaintiff, vs. National Assn. for the Advanc. of Colored People Defendant.

Please handle this receipt in accordance with the provisions of the statutes of the State of Mississippi.

Very truly yours,

Heber Ladner

Heber Ladner
Secretary of State

HLK:pj

Enclosure

Messrs. Morse and Morse
Attorneys At Law
P. O. Box 100
Gulfport, Mississippi

POST OFFICE DEPARTMENT
OFFICIAL BUSINESS

PENALTY FOR PRIVATE USE TO AVOID PAYMENT OF POSTAGE, $300

NEW YORK, N.Y. APR 19 PM 1965

POSTMARK OF DELIVERING OFFICE

PECK SLIP STA.

INSTRUCTIONS: Fill in items below and complete instructions on other side, if applicable. Moisten gummed ends, attach and hold firmly to back of article. Print on front of article RETURN RECEIPT REQUESTED.

RETURN TO 3

REGISTERED NO. 218-69	NAME OF SENDER SECRETARY OF STATE
CERTIFIED NO.	STREET AND NO. OR P. O. BOX P. O. BOX 136
INSURED NO.	CITY, STATE, AND ZIP CODE JACKSON, MISSISSIPPI

CSS—16—71560-5—7

Form 3811 Aug. 1963

INSTRUCTIONS TO DELIVERING EMPLOYEE

☑ Deliver ONLY to addressee

☐ Show address where delivered

(Additional charges required for these services)

RECEIPT

Received the numbered article described on other side.

SIGNATURE OR NAME OF ADDRESSEE (must always be filled in)

George G. Wiley Asst. Nat'l Dir.

SIGNATURE OF ADDRESSEE'S AGENT, IF ANY

DATE DELIVERED 4-19-65

SHOW WHERE DELIVERED (only if requested)

CSS—16—71560-5—7 GPO

Secretary of State

CORPORATION DIVISION
J. V. CARR, DEPUTY
...RY L. KELLEY, DEPUTY

SECURITIES DIVISION
BEN HAWKINS, DEPUTY

...TWOOD 5-2261
...TS. 295 & 297

JACKSON, MISSISSIPPI
POST OFFICE BOX 136

Mississippi

Heber Ladner

April 22, 1965

SOUTHERN DISTRICT OF MISSISSIPPI
FILED
APR 23 1965
Loryce E. Wharton, Clerk
By Kay Lyon, Deputy

Miss Loryce E. Wharton, Clerk
United States District Court
Biloxi, Mississippi

3040

We are enclosing herewith return receipt signed by Council of Racial Equality, Inc., showing that it has received a copy of the process together with notice of service on the Secretary of State in Cause No. _____, styled American Liberty Insurance Company, Plaintiff, vs. Council of Racial Equality, Inc., Defendant.

Please handle this receipt in accordance with the provisions of the statutes of the State of Mississippi.

Very truly yours,

Heber Ladner

Heber Ladner
Secretary of State

HLK:pj

Enclosure

cc: Messrs. Morse and Morse
Attorneys At Law
Post Office Box 100
Gulfport, Mississippi

* * * *

NOTE: Return on Service of Writ, for Defendants, and Summons for Defendants - Omitted- Filed in Their Original Forms.

...oOo...

ANSWER OF DEFENDANT CONGRESS OF RACIAL EQUALITY

(Number and Title Omitted) (Filed May 3, 1965)

Comes now the defendant Congress of Racial Equality (improperly designated in the complaint as the "Council of Racial Equality"), by and through its attorneys, and for its answer to the complaint herein alleges as follows:

1. Said Defendant denies having knowledge or information sufficient to form a belief of the citizenship or domicile of the plaintiffs and other defendants herein except it avers this defendant is a New York corporation, and further denies knowledge or information sufficient to form a belief as to the remaining allegations of paragraph 1.

2. Said Defendant denies knowledge or information sufficient to form a belief as to the allegations of paragraph 3.

4. Said Defendant denies knowledge or information sufficient to form a belief as to any alleged automobile accident, or any injuries resulting therefrom or any other allegations in paragraph 4, but acknowledges that a suit has been filed and that this defendant has been named a defendant therein.

5. With respect to paragraph 5, said Defendant denies knowledge or information sufficient to form a belief as to whether said policy covered said accident, and acknowledges that Plaintiff has advised said Defendant that it will not defend the law suit referred to therein.

6. Said Defendant denies knowledge or information sufficient to form a belief as to the allegations in paragraph 6, except it denies that it in any manner caused a breach of said policy referred to therein or that it deprived Plaintiff of anything whatsoever.

7. Said Defendant denies that the prosecution of the suit referred to in paragraph 7, could result in irreparable damage and injury to Plaintiff.

First Affirmative Defense

This Court lacks jurisdiction over the person of defendant Congress of Racial Equality. Service made on the Secretary of State of Mississippi pursuant to Sec. 9352-61 of the Mississippi Code of 1942 is ineffective since defendant Congress of Racial Equality has neither qualified to do business, nor does business within the State of Mississippi.

Second Affirmative Defense

Venue is improper. Defendant Congress of Racial Equality is a New York Corporation which has neither qualified to do business nor transacts business in Mississippi. On information and belief defendant Southern Christian Leadership

Conference is a Georgia Corporation that neither has qualified to do business nor does business in Mississippi. Therefore, not all of the defendants reside in this judicial district.

WHEREFORE said Defendant Congress of Racial Equality prays judgment dismissing the complaint herein and for such other, further and different relief as may be just and proper, together with the costs and disbursements of this action.

S/ R. Jess Brown
R. Jess Brown
125 1/2 N. Farish Street
Jackson, Mississippi

Alvin J. Bronstein
603 N. Farish Street
Jackson, Mississippi

Carl Rachlin
38 Park Row
New York, N.Y.

...oOo...

ANSWER OF DEFENDANT SOJOURNER MOTOR FLEET, INC.

(Number and Title Omitted) (Filed May 4, 1965)

1. The complaint fails to state a claim against this defendant for which relief may be granted.

2. For want of sufficient information, defendant can neither admit nor deny the allegations of paragraphs 1, 3, 4, and 7 of the complaint.

3. Defendant admits that an actual controversy of a

justificable nature exists between it and the plaintiff, respecting rights and liabilities under a liability insurance policy. However, for want of sufficient information, defendant can neither admit nor deny the remaining allegations of paragraph 2 as they pertain to other defendants.

4. Defendant admits that plaintiff has refused to extend coverage or to defend the claim on behalf of any person or persons protected by said policy. Defendant neither admits nor denies the remaining allegations of paragraph 5 of the complaint.

5. Defendant denies the allegations of paragraph 6 of the complaint.

WHEREFORE, defendant prays that it be discharged and that the costs be taxed against the plaintiffs.

S/ Jack H. Young
JACK H.YOUNG
115 1/2 North Farrish St.
Jackson, Mississippi

Howard Moore, Jr.
859 1/2 Hunter St., N.W.
Atlanta, Georgia 30314

Attorneys for Defendants

...oOo...

ANSWER OF DEFENDANT GROVER CLEVELAND HARRISON

(Number and Title Omitted) (Filed May 4, 1965)

1. The complaint fails to state a claim against this defendant for which relief may be granted.

2. For want of sufficient information or knowledge, defendant can neither admit nor deny the allegations of paragraphs, 1, 2, 3, 5, 6, and 7 of the complaint.

3. Answering paragraph 4, defendant admits that he was involved in the accident described in said paragraph. For want of sufficient information or knowledge, defendant can neither admit nor deny the remaining allegations of said paragraph.

WHEREFORE, having fully answered, defendant prays that he be discharged and costs taxed against the plaintiff.

S/ Jack H.Young
JACK H.YOUNG
115 1/2 North Farrish Street
Jackson, Mississippi

Howard Moore,Jr.
859 1/2 Hunter Street, N.W.
Atlanta, Georgia 30314

ATTORNEYS FOR DEFENDANT

...oOo...

ANSWER OF DEFENDANT NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE

(Number and Title Omitted) (Filed May 4, 1965)

Comes now the defendant National Association for the Advancement of Colored People, by and through its attorneys, and in answer to the complaint filed herein would show unto the Court as follows:

I

Defendant National Association for the Advancement of

Colored People is without knowledge as to the allegations of the residences of the other defendants, and neither denies nor admits the same.

Defendant National Association for the Advancement of Colored People admits that the amount in controversy exceeds $10,000.00, exclusive of interest and costs.

II.

Defendant National Association for the Advancement of Colored People is without knowledge as to the allegations of Paragraph 2, and neither denies or admits the same.

III

Defendant National Association for the Advancement of Colored People is without knowledge as to the allegations of Paragraph 3, and neither denies nor admits the same.

IV

Defendant National Association for the Advancement of Colored People does not have sufficient information to either admit or deny the allegations of Paragraph 4, except that the defendant admits that a suit has been filed as mentioned in said paragraph.

V

Defendant National Association for the Advancement of Colored People is without sufficient information to admit or deny the allegations of Paragraph 5.

VI

Defendant National Association for the Advancement of Colored People is without sufficient information to admit or deny the allegations of Paragraph 6, but defendant denies that this defendant has breached any terms and conditions of the insurance policy mentioned in said suit and further denies that it has deprived the plaintiff of the opportunity to conduct and control the defense of said suit.

VII

Defendant National Association for the Advancement of Colored People denies that the prosecution of said suit will result in irreparable damage and injury to the plaintiff.

Now having fully answered, defendant National Association for the Advancement of Colored People prays that it be dismissed with its costs.

NATIONAL ASSOCIATION FOR THE
ADVANCEMENT OF COLORED PEOPLE

BY S/ Jack H. Young
Its Attorney

ROBERT L. CARTER
BARBARA A. MORRIS
20 West 40th Street
New York, New York 10018

JACK H. YOUNG
115 1/2 North Farish Street
Jackson, Mississippi 39201

...oOo...

ANSWER OF DEFENDANT STUDENT NONVIOLENT COORDINATING COMMITTEE

(Number and Title Omitted) (Filed May 4, 1965)

1. The complaint fails to state a claim against this defendant for which relief may be granted.

2. For want of sufficient information, defendant can neither admit nor deny the allegations of paragraphs 1, 2, 3, 4, 5, 6, and 7 of the complaint.

3. For further answer, defendant avers that it is an unincorporated association.

WHEREFORE, having fully answered, defendant prays that it be discharged and costs taxed against the plaintiff.

S/ Jack H. Young
JACK H. YOUNG
1151 1/2 North Farrish Street
Jackson, Mississippi

HOWARD MOORE, JR.
859 1/2 Hunter Street, N.W.
Atlanta, Georgia 30314

ATTORNEYS FOR DEFENDANT

...oOo...

MOTION TO DISMISS

(Number and Title Omitted) (Filed May 4, 1965)

The defendant Southern Christian Leadership Conference moves the Court as follows:

I

To dismiss the action because the complaint fails to state a claim against the defendant Southern Christian

...oOo...

Leadership Conference upon which relief can be granted.

II

To dismiss the action or in lieu thereof to quash the return of service of summons on the grounds: (a) That the defendant Southern Christian Leadership Conference is a corporation organized under the laws of the State of Georgia and is not subject to process within the Southern District of Mississippi, and (b) that the defendant Southern Christian Leadership Conference has not been properly served with process in this action.

III

To dismiss the action on the ground that it is in the wrong District because the defendant Southern Christian Leadership Conference is a corporation incorporated under the laws of the State of Georgia and is not licensed to do business, does not do business and has not done business in the Southern District of Mississippi..

IV

To dismiss the action on the ground that it is in the wrong District because neither all of the plaintiffs nor all of the defendants reside in the Southern District of Mississippi and thus, venue is improper.

SOUTHERN CHRISTIAN LEADERSHIP CONFERENCE

BY S/ Jack H. Young
Its Attorney

JACK H. YOUNG
115 1/2 North Farish Street
Jackson, Mississippi
39201

...oOo...

Secretary of State

CORPORATION DIVISION
J. V. CARR, DEPUTY
HARRY L. KELLEY, DEPUTY

Mississippi

Heber Ladner

May 5, 1965

SOUTHERN DISTRICT OF MISSISSIPPI
FILED
MAY 6 - 1965
Loryce E. Wharton, Clerk
By Mary Lynn Hall

Miss Loryce E. Wharton, Clerk
United States District Court
Biloxi, Mississippi

We are enclosing herewith a xerox copy of the front and back of the envelope containing our Registry No. 218-67 addressed to Sojourner Motor Fleet, Inc.-S 1/2 Raymond Street N.W. Atlanta, Georgia. This registry contained a copy of the process together with notice of service on the Secretary of State in Cause No. 3040(S)(C), styled American Liberty Insurance Company, Plaintiff, vs. Sojourner Motor Fleet, Inc., Defendant.

Please file this copy as a part of the record in this case so that the court will know the reason for the nondelivery.

Very truly yours,

Heber Ladner
Secretary of State

HLK:pj

Enclosure

cc:
Messrs. Morse and Morse
Attorneys At Law
P. O. Box 100
Gulfport, Mississippi

46

HEBER LADNER
Secretary of State
POST OFFICE BOX 136
JACKSON, MISSISSIPPI 39205

REGISTERED

REGISTERED MAIL
DELIVER TO AGENT OR OFFICER
OF ADDRESSEE ONLY
RETURN RECEIPT REQUESTED

REGISTERED NO. 218-67

POSTMASTER: PLEASE ADVISE IF
ADDRESSEE REFUSES TO ACCEPT
DELIVERY.

UNKNOWN
FROM STA. B
ATLANTA, GA. 30316

UNKNOWN
FROM STA. B
ATLANTA, GA. 30316

Sojourner Motor Fleet, Inc
8-[illegible] Raymond Street
Northwest
Atlanta, Georgia

☐ Moved, left no address
☐ No such number
☐ Moved, not forwardable
☑ Addressee unknown

39 Year

JACKSON
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46

ANSWER OF DEFENDANTS: ARLENA L. SMITH, BOBBIE L. McMULLEN AND BETTY L. GOLDEN

(Number and Title Omitted) (Filed May 21, 1965)

1. The plaintiff has failed to state a claim against the above named defendants for which relief may be justifiable.

2. For lack of information, the above defendants cannot admit nor deny the allegations of the plaintiff as set down in paragraph 1, 2, 3, 5 and 6 of the plaintiff.

3. Defendants answer paragraph 4, saying that their father and mother were involved in an automobile accident with an automobile operated by Grover Cleveland Harrison. As a result of this accident the mother of defendants died on the date of the accident, as described in paragraph 4 of the plaintiff, and their father died three days later.

4. Defendants answer paragraph 7, and avers that the representative of plaintiff called on their counsel in regard to said accident as stated in paragraph 4 of plaintiffs complaint for Declaratory Judgment.

Wherefore, defendants pray this court will determine that the plaintiff is liable in this proceeding; that there is a cause of action arising out of said automobile accident; that the plaintiff's are jointly liable under their policy agreement; that an order restraining the further prosecution of said suit would result in unjustifiable

damage and injury to the defendants.

Defendants pray, that having fully answered, they be discharged and cost taxed against the plaintiff.

S/ James A. Walters
JAMES A. WALTERS
519 NORTH SECOND AVENUE
COLUMBUS, MISSISSIPPI

ATTORNEY FOR DEFENDANTS

...oOo...
* * * * *

NOTE: Notice of Depositions, Affidavit of Service, Notice: Change of Time of Depositions, - Omitted- Filed in their original forms.

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MOTION TO DISMISS

(Number and Title Omitted) (Filed Aug 31, 1965)

Now comes the Council of Federated Organizations, a defendant in the above styled and numbered cause, by its attorney of record, and moves the Court to dismiss the Council of Federated Organizations as a defendant for lack of jurisdiction of the said party defendant, and as gounds therefor would show unto the Court the following, to-wit:

That this Court lacks jurisdiction over the Council of Federated Organizations in as much as the said party defendant is an unincorporated association thereby being immune from suit as an entity.

S/ L. H. Rosenthal
COUNCIL OF FEDERATED ORGANIZATIONS
BY: L. H. ROSENTHAL

L. H. Rosenthal
Suite 406
518 E. Capitol St.
Jackson, Mississippi

SMITH, WALTZER, JONES & PEEBLES
Benjamin E. Smith
1006 Baronne Building
505 Baronne Street
New Orleans, Louisiana

...oOo...

NOTE: Motion for Continuance, Affidavit of Paul W. Brock in the Support of Motion for Continuance, Omitted- Filed in its Original Form.

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MOTION FOR CONTINUANCE AND ORDER COMPELLING ATTENDANCE OF DEPONENT

(Number and Title Omitted) (Filed Sep. 3, 1965)

Plaintiff moves the Court for an order continuing the hearing on a motion to dismiss filed in this cause by Southern Christian Leadership Conference until the actual trial of the case, presently scheduled for October 13, 1965, and for an order directing the defendant Grover Cleveland Harrison to appear at the office of Attorneys for the Plaintiff, 6th Floor, First National Bank Building, Mobile, Alabama, on Tuesday, September 28, 1965, at 2:30 P.M. for the taking of his deposition. In support of its motion, plaintiff has attached hereto two affidavits and shows unto the Court the following:

1. That on the 13th day of August, 1965, Attorneys for the Plaintiff deposited in the United States mail, postage

prepaid, a copy of a "Notice of Depositions" addressed to Jack H. Young, Esquire, at Jackson, Mississippi, and to Howard Moore, Jr., Esquire, at Atlanta, Georgia, as attorneys for the defendant Grover Cleveland Harrison. That said notice listed Grover Cleveland Harrison as one of the persons to be deposed and gave the time of his deposition as 9:00 A.M., August 26, 1965.

2. That on the 18th day of August, 1965, Howard Moore, Jr., Esquire, attorney for the defendant Grover Cleveland Harrison, telephoned the Attorneys for the Plaintiff at their offices in Mobile, Alabama, and informed them that he was desirous of changing the time of Grover Cleveland Harrison's deposition from 9:00 A.M., August 26, 1965, to 9:00 A.M., August 27, 1965, and in a similar manner changing the times of other parties originally scheduled to be deposed on August 26, 1965, to similar times on August 27, and vice-versa. That with the exception of his objection as to times above mentioned, Howard Moore, Jr., Esquire, made no further objection with reference to the scheduling of the depositions.

3. That in an effort to accomodate Howard Moore, Jr., Esquire, the Attorneys for the Plaintiff notified him by telephone on August 19, 1965, that they were willing to re-schedule the times of the depositions as he had requested. That on the 19th day of August, 1965, the Attorneys for the Plaintiff deposited in the United States mail, postage

prepaid, a copy of a "Notice: Change of Times of Depositions" addressed to Jack H. Young, Esquire, at Jackson, Mississippi, and to Howard Moore, Jr., Esquire, at Atlanta, Georgia, as attorneys for the defendant Grover Cleveland Harrison. That said notice listed Grover Cleveland Harrison as one of the persons to be deposed and gave the time of his deposition as 9:00 A.M., August 27, 1965.

4. That during neither of the telephone conversations with Howard Moore, Jr., Esquire, referred to in Paragraphs Two and Three above did Howard Moore, Jr., Esquire, in any way indicate to the Attorneys for the Plaintiff that the defendant Grover Cleveland Harrison would not appear for the taking of his deposition.

5. That in the late afternoon of August 24, 1965, Patrick Burns, Esquire, one of the attorneys for the defendant Congress of Racial Equality, telephoned the Attorneys for the Plaintiff at their offices in Mobile, Alabama, and informed them that he understood that Grover Cleveland Harrison would not be present for the taking of his deposition.

6. That upon receipt of this communication from Patrick Burns, Esquire, the Attorneys for the Plaintiff immediately telephoned Howard Moore, Jr., Esquire, in an effort to determine whether the defendant Grover Cleveland Harrison would in fact be present at the taking of his

deposition. That then, and for the first time, Howard Moore, Jr., Esquire, communicated to the Attorneys for the Plaintiff the information that Grover Cleveland Harrison was to the best of his knowledge in Los Angeles, California, participating in civil rights activity and would not be present for the taking of his deposition. That the Attorneys for the Plaintiff communicated to Howard Moore, Jr., Esquire, that, reasonable notice having been given, the Attorneys for the Plaintiff would be present at the appointed place at the appointed time ready to take the deposition of Grover Cleveland Harrison and would expect him to appear.

7. That at the appointed time and place - namely, 9:00 A.M., August 27, 1965, at the offices of attorneys at law Ross & Finch in Atlanta, Georgia - the defendant Grover Cleveland Harrison failed to appear for the taking of his deposition. That the Attorneys for the Plaintiff waited for Grover Cleveland Harrison to appear until 9:30 A.M., August 27, 1965, and as he still failed to appear, the Attorneys for the Plaintiff proceeded to take the deposition of Miss Elizabeth R. Garman. That at the conclusion of all depositions scheduled for August 27, 1965, to-wit, 3:00 P.M., the defendant Grover Cleveland Harrison had still made no appearance.

8. That one of the primary interests of the Attorneys

for the Plaintiff in taking the deposition of the defendant Grover Cleveland Harrison was to obtain evidence which would bear directly upon the issues raised by the defendant Southern Christian Leadership Conference in its motion to dismiss. That, from statements of the defendant Grover Cleveland Harrison taken by insurance adjusters for the plaintiff, the Attorneys for the Plaintiff have reason to believe that the defendant Grover Cleveland Harrison is possessed of information bearing directly upon said issues and that had he appeared for the taking of his deposition as scheduled his deposition would have been of substantial value to the plaintiff on the hearing of said motion to dismiss.

9. That as a consequence of the defendant Grover Cleveland Harrison's failure to appear at the scheduled time and place for the taking of his deposition, the plaintiff will be materially hampered in its ability to present evidence which would tend to defeat the motion to dismiss filed by Southern Christian Leadership Conference.

WHEREFORE, plaintiff prays the court to enter an order continuing the hearing on the motion to dismiss filed by Southern Christian Leadership Conference until the trial of the case and directing the defendant Grover Cleveland Harrison to present himself at the offices of the Attorneys for the Plaintiff, 6th Floor, First National Bank Building, Mobile, Alabama, on Tuesday, September 28, 1965, at 2:30 P.M.

for the taking of his deposition.

S/ Paul W. Brock
Paul W. Brock

Of Counsel:

HAND, ARENDALL, BEDSOLE, GREAVES & JOHNSTON

S/ George E. Morse
George E. Morse

Of Counsel:

MORSE & MORSE

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AFFIDAVIT OF PAUL W. BROCK IN THE SUPPORT OF MOTION FOR CONTINUANCE AND ORDER COMPELLING ATTENDANCE OF DEPONENT

(Number and Title Omitted) (Filed)

STATE OF ALABAMA:

COUNTY OF MOBILE:

Paul W. Brock, one of the Attorneys for the plaintiff, being first duly sworn, deposes and says:

1. I am an attorney at law associated with Hand, Arendall, Bedsole, Greaves and Johnston, Attorneys for the Plaintiff herein, and am familiar with the facts and proceedings heretofore had herein and make this affidavit in support of a Motion for Continuance and Order Compelling Attendance of Deponent.

2. That on the 13th day of August, 1965, I deposited in the United States mail, postage prepaid, a copy of a "Notice of Depositions" addressed to Jack H. Young, Esquire,

at Jackson, Mississippi, and to Howard Moore, Jr., Esquire, at Atlanta, Georgia, as attorneys for the defendant Grover Cleveland Harrison. That said notice listed Grover Cleveland Harrison as one of the persons to be deposed and gave the time of his deposition as 9:00 A.M., August 26, 1965.

3. That on the 18th day of August, 1965, Howard Moore, Jr., Esquire, attorney for the defendant Grover Cleveland Harrison, telephoned me at my office in Mobile, Alabama, and informed me that he was desirous of changing the time of Grover Cleveland Harrison's deposition from 9:00 A.M., August 26, 1965, to 9:00 A.M., August 27, 1965, and in a similar manner changing the times of other parties originally scheduled to be deposed on August 26 to similar times on August 27, and vice versa. That with the exception of his objection as to times above mentioned, Howard Moore, Jr., Esquire, made no further objection with reference to the scheduling of the depositions.

4. That on the 19th day of August, 1965, I deposited in the United States mail, postage prepaid, a copy of a "Notice: Change of Times of Depositions" addressed to Jack H. Young, Esquire, at Jackson, Mississippi, and to Howard Moore, Jr., Esquire, at Atlanta, Georgia, as attorneys for the defendant Grover Cleveland Harrison. That said notice listed Grover Cleveland Harrison as one of the persons to be deposed and gave the time of his deposition as 9:00 A.M.,

August 27, 1965.

5. That during my telephone conversation with Howard Moore, Jr., Esquire, attorney for defendant Grover Cleveland Harrison on the 18th day of August, 1965, Howard Moore, Jr., Esquire, made no indication to me that the defendant Grover Cleveland Harrison would not appear for the taking of his deposition.

6. That one of my primary interests in taking the deposition of the defendant Grover Cleveland Harrison was to obtain evidence which would bear directly upon the issues raised by the defendant Southern Christian Leadership Conference in its motion to dismiss. That, from statements of the defendant Grover Cleveland Harrison taken by insurance adjusters for the plaintiff, I have reason to believe that the defendant Grover Cleveland Harrison is possessed of information bearing directly upon said issues and that had he appeared for the taking of his deposition as scheduled his deposition would have been of substantial value to the plaintiff on the hearing of said motion to dismiss.

7. That as a consequence of the defendant Grover Cleveland Harrison's failure to appear at the scheduled time and place for the taking of his deposition, the plaintiff will be materially hampered in its ability to present evidence which would tend to defeat the motion to dismiss filed by Southern Christian Leadership Conference.

S/ Paul A. Brock
Paul A. Brock

Subscribed and sworn to

before me this 2d day of

September, 1965.

S/ Joyce B. Graves
Notary Public, Mobile County, Alabama (Seal)

...oOo...

AFFIDAVIT OF W. RAMSEY McKINNEY, JR. IN THE SUPPORT OF MOTION FOR CONTINUANCE AND ORDER COMPELLING ATTENDANCE OF DEPONENT

(Number and Title Omitted) (Filed)

STATE OF ALABAMA:

COUNTY OF MOBILE:

W. Ramsey McKinney, Jr., being first duly sworn, deposes and says:

1. I am an attorney at law associated with Hand, Arendall, Bedsole, Greaves and Johnston, Attorneys for the Plaintiff herein, and am familiar with the facts and proceedings heretofore had herein and make this affidavit in support of a Motion for Continuance and Order Compelling Attendance of Deponent.

2. That following the telephone conversation of Howard Moore, Jr., Esquire, with Paul W. Brock, Esquire, at my office in Mobile, Alabama, on August 18, 1965, I telephoned Howard Moore, Jr., Esquire, attorney for the defendant Grover Cleveland Harrison, on August 19, 1965, and informed him that we were willing to re-schedule the times of the depositions as he had requested in his telephone conversation with

Paul W. Brock. That during my telephone conversation with Howard Moore, Jr., Esquire, attorney for defendant Grover Cleveland Harrison on August 19, 1965, Howard Moore, Jr., Esquire, made no indication to me that the defendant Grover Cleveland Harrison would not appear for the taking of his deposition.

3. That in the late afternoon of August 24, 1965, Patrick Burns, Esquire, one of the attorneys for the defendant Congress of Racial Equality, telephoned me at my office in Mobile, Alabama, and informed me that he understood that Grover Cleveland Harrison would not be present for the taking of his deposition.

4. That one of my primary interests in taking the deposition of the defendant Grover Cleveland Harrison was to obtain evidence which would bear directly upon the issues raised by the defendant Southern Christian Leadership Conference in its motion to dismiss. That, from statements of the defendant Grover Cleveland Harrison taken by insurance adjusters for the plaintiff, I have reason to believe that the defendant Grover Cleveland Harrison is possessed of information bearing directly upon said issues and that had he appeared for the taking of his deposition as scheduled his deposition would have been of substantial value to the plaintiff on the hearing of said motion to dismiss.

5. That at the appointed time and place - namely,

9:00 A.M., August 27, 1965, in the offices of Attorneys at Law Ross & Finch in Atlanta, Georgia - the defendant Grover Cleveland Harrison failed to appear for the taking of his deposition. That I waited for Grover Cleveland Harrison to appear until 9:30 A.M., August 27, 1965, and he still failed to appear. That at the conclusion of all depositions scheduled for August 27, 1965, to-wit, 3:00 P.M., the defendant Grover Cleveland Harrison had still made no appearance.

S/ W. Ramsey McKinney, Jr.
W. Ramsey McKinney, Jr.

Subscribed and sworn to
before me this 2d day of
September, 1965.

S/ Joyce B. Graves
Notary Public, Mobile County, Alabama
(Seal)

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* * *

NOTE: Deposition of Randolph T. Blackwell, Deposition of Constancia Romilly, - Omitted- Filed in Their Original Forms.

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ORDER THAT THE HEARING ON MOTIONS TO DISMISS BE CONTINUED

(Number and Title Omitted) (Filed Sep 16, 1965)

On motion of the Plaintiff, for good cause shown, it is

ORDERED:

1. That the hearing on the motions to dismiss filed by Southern Christian Leadership Conference and Council of Federated Organizations are hereby continued.

2. That the defendant Grover Cleveland Harrison shall present himself at the Federal Building, Biloxi, Mississippi, on Saturday, September 25, 1965, at 9:00 A.M. for the taking of his deposition by Plaintiff.

3. That service of a certified copy of this Order upon Jack H. Young, Esquire, and Howard Moore, Jr., Esquire, attorneys of record for the defendant Harrison, shall constitute sufficient notice to said Harrison of that part of this Order directing him to appear for the taking of his deposition.

S/ Harold Cox
U. S. District Judge

September 16th, 1965.

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MOTION FOR LEAVE TO WITHDRAW AS COUNSEL FOR THE THREE NAMED DEFENDANTS

(Number and Title Omitted) (Filed Sep 21, 1965)

Comes now Jack H. Young, one of the attorneys of record for the defendants, Grover Cleveland Harrison, Sojourner Motor Fleet, Inc., and Student Non-Violent Coordinating Committee, and moves the Court for leave to withdraw as counsel for the above-named defendants and assigns as reason

therefor, the following:

That prior to his employment by said defendants, he had been retained to represent two other defendants in the case and that it now appears that there might be a conflict of interest between the parties who first employed him and the three defendants named herein.

Respectfully submitted,

S/ Jack H. Young
JACK H. YOUNG, Attorney for Defendants Grover Cleveland Harrison, Student Non-Violent Coordinating Committee, Sojourner Motor Fleet, Inc., National Association for the Advancement of Colored People, Southern Christian Leadership Conference

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ORDER GRANTING JACK H. YOUNG, LEAVE TO WITHDRAW AS COUNSEL

(Number and Title Omitted) (Filed Sept 21, 1965)

This cause this day coming on to be heard on the motion of Jack H. Young, one of the attorneys of record for the defendants, Grover Cleveland Harrison, Sojourner Motor Fleet, Inc., and Student Non-Violent Coordinating Committee, for leave to withdraw as counsel for the above named defendants, and it appearing unto the Court that the motion should be sustained, it is, therefore,

Ordered and Adjudged that Jack H. Young be and he is hereby authorized to withdraw as counsel of record for the defendants, Grover Cleveland Harrison, Sojourner Motor Fleet, Inc., and Student Non-Violent Coordinating Committee, and that

said defendants are hereby given 10 days in which to secure other counsel.

ORDERED this 21st day of September, 1965.

APPROVED BY:

S/ Harold Cox
UNITED STATES DISTRICT JUDGE

S/ Howard Moore, Jr.
Howard Moore, Jr.
859 1/2 Hunter Street, N.W.
Atlanta, Georgia
ATTORNEY FOR DEFENDANTS Grover Cleveland Harrison, Sojourner Motor Fleet, Inc., and Student Non-Violent Coordinating Committee

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INTERROGATORIES TO COUNCIL OF FEDERATED ORGANIZATIONS

(Number and Title Omitted) (Filed Sept 29, 1965)

The plaintiff requests that the defendant, Council of Federated Organizations (COFO), by an officer or agent thereof, answer under oath and in accordance with Rule 33 of the Federal Rules of Civil Procedure, the following interrogatories:

1. Is COFO a corporation? If so, under the laws of which state was it incorporated and where is its principal place of business?

2. Is COFO an unincorporated association? If so, which persons or groups are members thereof?

3. For what purpose was COFO organized? When was it organized?

4. Who are the principal officers of COFO and what are their respective titles?

5. How is COFO principally financed?

6. Was COFO conducting a program in the State of

Mississippi during the period of time from September, 1964, to May, 1965? If the answer is "yes," what activities were within the scope of its program and what were the extent of those activities?

7. Did COFO maintain offices in the State of Mississippi during the period of time referred to in paragraph six? If the answer is "yes," state where those offices were and if these offices are still maintained by COFO.

8. If COFO maintained offices in the State of Mississippi during the period of time referred to in paragraph 6, state names of the individuals who were in those offices and state what civil rights groups said individuals were members of.

9. During the period of time referred to in paragraph 6, how many individuals, approximately, were engaged in COFO activities in Mississippi?

10. During the period of time referred to in paragraph 6, were members of CORE and SCLC participating in COFO activities in Mississippi? If the answer is "yes," state the names of the CORE and SCLC members participating in said COFO activities.

11. During the period of time referred to in paragraph six, what means of transportation were used by COFO workers?

12. If automobiles were used in the transportation of COFO workers, approximately how many were used and by whom

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were said automobiles owned?

13. Has COFO ever leased automobiles from Sojourner Motor Fleet, Inc.? If the answer is "yes," state when and how many.

14. Has COFO ever leased automobiles from SNCC? If the answer is "yes," state when and how many.

15. Has Sojourner Motor Fleet, Inc. ever donated or loaned automobiles to COFO for COFO's use in its activities in the State of Mississippi? If the answer is "yes," state when and how many.

16. Has SNCC ever donated automobiles to COFO for COFO's use in its activities in the State of Mississippi? If the answer is "yes," state when and how many.

17. During the period from September, 1964, to May, 1965, did COFO ever call upon Sojourner Motor Fleet, Inc. or SNCC to provide it with automobiles for its use in the State of Mississippi? If the answer is "yes," were the requests honored, and if they were, how many autobiles were provided?

PLEASE TAKE NOTICE THAT A COPY OF SUCH ANSWERS MUST BE SERVED UPON THE UNDERSIGNED WITHIN 15 DAYS AFTER THE SERVICE OF THESE INTERROGATORIES AND THAT SAID SERVICE IS COMPLETED UPON MAILING UNDER RULE 5, FEDERAL RULES OF CIVIL PROCEDURE.

S/ Paul W. Brock
Paul W. Brock
Attorney for Plaintiff
Post Office Box 123
Mobile, Alabama.

Of Counsel:

HAND ARENDALL, BEDSOLE
GREAVES & JOHNSTON

MORSE & MORSE

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INTERROGATORIES TO SOJOURNER
MOTOR FLEET, INC.

(Number and Title Omitted) (Filed Sep 29, 1965)

The plaintiff requests that the defendant Sojourner Motor Fleet, Inc., by an officer or agent thereof, answer under oath, in accordance with Rule 33 of the Federal Rules of Civil Procedure, the following interrogatories:

1. With respect to each of the vehicles listed below, please state (a) the date of acquisition, (b) whether the acquisition was by purchase or gift, (c) the date of disposal, (d) the reason for disposal, (e) whether during the months of September and October of 1964 the vehicle was garaged for repairs, (f) if it was garaged for repairs during said period, where and for what length of time was it so garaged, (g) if the vehicle had not been disposed of prior to October 24, 1964, whether on said date the vehicle was in operating condition, and if it were not, why not.

(1) 1957 Ford Stationwagon
ID - C7FX343377

(2) 1955 Chevrolet
VC55B050722

(3) 1955 Mercury
ID-55M13763M

(4) 1957 Plymouth
ID-16280968

(5) 1960 Ford
ID- OK215222190

(6) 1958 Peugeot

(7) 1953 Pontiac
ID - L8XH30634

(8) 1957 Mercury
57ME64944M

(9) 1956 Ford
ID -M65R-122915

(10) 1958 Chevrolet
ID -B58T185487

(11) 1955 Pontiac
ID - C755H18650

(12) 1951 Buick
ID - 64694365

(13) 1955 Pontiac
ID - P755H16646

(14) 1964 Valiant
ID - 1142 715545

(15) 1955 Willis
ID - 5472710450

(16) 1958 Volvo
ID - B16B4953854093

(17) 1959 English Ford
ID - 204E145072

(18) 1955 Pontiac
P755H16646

(19) 1956 Cadillac
ID - 5662-020374

(20) 1953 Nash
ID - F15543

(21) 1952 Studebaker
ID - 920127

(22) 1957 Chevrolet
ID - VB57T147781

* * * * *

(23) 1951 Plymouth
ID - 12688560

(24) 1953 Dodge
ID - 34602789

(25) 1960 Ford
ID - OH125171947

(26) 1955 Plymouth
ID - P2698178

(27) 1956 Chevrolet
ID - B56B124605

(28) 1957 Volkswagen
ID - 491805

(29) 1964 Plymouth
ID - 1147 - 205008

(30) 1964 Plymouth
ID - 1142 - 7212

(31) 1963 Valiant
377111215

Please take notice that a copy of such answers must be served upon the undersigned within 15 days after service of these interrogatories, which service is complete upon mailing under Rule 5, Federal Rules of Civil Procedure.

Dated, September 29, 1965

S/ Paul W. Brock
Paul W. Brock
Attorney for Plaintiff
Post Office Box 123
Mobile, Alabama

Of Counsel:

HAND, ARENDALL, BEDSOLE
GREAVES & JOHNSTON

MORSE & MORSE

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* * * * *

NOTE: Deposition of Grover Cleveland Harrison, Deposition of Clyde L. Wollen, Jr., With Attachments, Deposition of Elizabeth R. Garman, with Attachments, Deposition of W. G. Stephens, Jr., Omitted - Filed in Their Original Forms.

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MOTION OF DEFENDANTS GROVER CLEVELAND HARRISON, SOJOURNER MOTOR FLEET, INC., AND STUDENT NON-VIOLENT COORDINATING COMMITTEE TO ALLOW APPEARANCE OF LOCAL COUNSEL

(Number and Title Omitted) (Filed Oct 1, 1965)

Pursuant to the order of the Court dated September 21, 1965, defendants, GROVER CLEVELAND HARRISON, SOJOURNER MOTOR FLEET, INC., and STUDENT NONVIOLENT COORDINATING COMMITTEE, through their undersigned attorney, move the Court for an order permitting the appearance of Eddie H. Tucker, Esquire, 115 1/2 North Farish Street, Jackson, Mississippi, as attorney of record for these defendants. As grounds therefor, defendants aver:

1. Eddie H. Tucker, Esquire, is a duly licensed member of the Bar of the State of Mississippi and is admitted to practice before the Bar of this Honorable Court.

2. Eddie H. Tucker, Esquire, has agreed to represent these defendants for a valuable consideration, and they have agreed to retain the said Eddie H. Tucker as their attorney.

WHEREFORE, defendants move the Court for an order allowing the appearance of the said Eddie H. Tucker, Esquire.

S/ Howard Moore, Jr.
HOWARD MOORE, JR.
859 1/2 HUNTER ST., N.W.
ATLANTA, GEORGIA 30314

ATTORNEY FOR DEFENDANTS

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RESPONSE OF DEFENDANT GROVER CLEVELAND HARRISON TO THE ORDER OF THE COURT TO APPEAR FOR THE TAKING OF HIS DEPOSITION

(Number and Title Omitted) (Filed Oct 1, 1965)

Defendant GROVER CLEVELAND HARRISON, through his attorney, reports to the Court that he has complied with the order of September 16, 1965, directing him to appear at the Federal Building, Biloxi, Mississippi, Saturday, September 25, 1965, at 9:00 A.M., for the taking of his deposition by the above-named plaintiff, by appearing at the Federal Building, Biloxi, Mississippi, Friday, September 24, 1965, and being deposed between the hours of 11:00 A.M. and 3:00 P.M., by counsel for the plaintiff and by Mr. Alvin Bronstein, counsel for defendant Congress of Racial Equality and of counsel to defendants National Association for the Advancement of Colored People, Southern Christian Leadership Conference, Inc., and Council of Federated Organizations.

Defendant Harrison is advised that notice was given all counsel, including Mr. James A. Walters, of the change

in date and that the change was made to accommodate Mr. Bronstein and agreed to by counsel for the plaintiff and the undersigned attorney for defendant Harrison.

Defendant further states that his sole reason for not being present for the taking of his deposition in Atlanta, Georgia, August 27, 1965 is that he did not receive notice prior to the scheduled taking.

Respectfully submitted,

S/ Howard Moore, Jr.
HOWARD MOORE, JR.
859 1/2 Hunter St., N.W.
Atlanta, Georgia 30314

ATTORNEY FOR DEFENDANT
GROVER CLEVELAND HARRISON

...oOo...

NOTE: Notice of Deposition Taking - Omitted-
Filed in its Original Form.

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INTERROGATORIES OF DEFENDANTS GROVER CLEVELAND HARRISON, SOJOURNER MOTOR FLEET, INC., AND STUDENT NONVIOLENT COORDINATING COMMITTEE DIRECTED TO THE PLAINTIFF.

(Number and Title Omitted) (Filed Oct 4, 1965)

Defendants request the American Liberty Insurance Company, a corporation, by an officer or agent thereof, answer under oath, in accordance with Rule 33 of the Federal Rules of Civil Procedure, the following interrogatories:

1. What is the name and address of the President of the

American Liberty Insurance Company?

2. How long has the plaintiff been engaged in the insurance business under the name and style of American Liberty Insurance Company, a corporation?

3. How long has the plaintiff done business with Casualty Underwriters, Inc.?

4. Does the plaintiff have a contract of employment with the Casualty Underwriters, Inc.?

5. If yes, to number 4, what is the name and address of the person or firm which has custody and control of the contract which existed between plaintiff and Casualty Underwriters, Inc. on November 19, 1964?

6. Did plaintiff have a credit report made upon the Sojourner Motor Fleet, Inc., or the Student Nonviolent Coordinating Committee, or both prior to November 19, 1965?

7. What agent, person, or firm conducted an investigation of the driving records of operators of motor vehicles owned by Sojourner Motor Fleet, Inc., insured by you and on what date was the investigation completed?

8. What firm or person now has custody and control of that report?

9. What are the names and addresses of the claim adjusters or other representatives of your company who investigated the accident which occurred on November 19, 1965 in Stone County, Mississippi and on what dates did the investigation occur?

10. When and from whom did you first learn that an accident had occurred in Stone County, Mississippi involving your policy with Sojourner Motor Fleet, Inc.?

11. How long have you done business with Clyde L. Woolen, Jr.?

12. Have you issued or caused to be issued and distributed manuals containing your auto casualty premium rates?

13. If yes to 12 above, when and what is the name and address of the person of firm who now now has custody and possession of any such manual?

14. On what date or dates was your manual or rates issued or distributed to Casualty Underwriters, Inc.?

15. What do the following notations indicate which appear on the endorsements to policy No. DM 672444 and by whom were they made?

(a) "Noted Nov. 16, 1964"

(b) "Noted Dec. 29, 1964 B.H."

16. How much was the premium on each of the individual vehicles insured under Policy DM672444?

17. Do you offer premium discounts to fleets?

18. State specifically the provision or provisions of the policy (DM672444) involved in this accident which plaintiff relies on to absolve it of the responsibility of defending defendants and of satisfying a judgment to the

extent of coverage.

Please take notice that a copy of your answers must be served upon the undersigned within fifteen (15) days after receipt of these interrogatories as provided for in Rule 33, Federal Rules of Civil Procedure.

This 30th day of September, 1965.

S/ Howard Moore, Jr.
HOWARD MOORE, JR.
859 1/2 Hunter St., N.W.
Atlanta, Georgia 30314

ATTORNEY FOR DEFENDANTS

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NOTE: Deposition of Grover Cleveland Harrison-
Omission - Filed in its Original Form.

...oOo...

REQUEST FOR ADMISSION OF FACTS BY
CONGRESS OF RACIAL EQUALITY

(Number and Title Omitted) (Filed Oct 7, 1965)

The plaintiff requests that the defendant, Congress of Racial Equality, by an officer or agent thereof, within ten (10) days after service of this request to admit, for the purpose of this action only and subject to all pertinent objections to admissibility which may be interposed at the trial, the truth of the following facts:

1. Bikiel F. Flowers was a voluntary worker for Congress of Racial Equality in October, 1964.

2. Bikiel F. Flowers was a salaried employee of Congress of Racial Equality in October, 1964.

3. Bikiel F. Flowers was driving a 1964 Plymouth, M#2141-321259, on October 16, 1964.

4. Bikiel F. Flowers was driving a 1964 Plymouth, M#2141-321259, on October 16, 1964, and was involved in an automobile accident on said date in Columbus, Mississippi.

5. The 1964 Plymouth, M#2141-321259, was owned by Sojourner Motor Fleet, Inc., on October 16, 1964.

Please take notice that a copy of such admissions must be served upon the undersigned within ten (10) days after service of these requests for admissions, which service is complete upon mailing under Rule 5, Federal Rules of Civil Procedure.

S/ Paul W. Brock
Paul W. Brock
Attorney for Plaintiff
622 First National Bank Building
Mobile, Alabama

DATED October 6, 1965.

Of Counsel:

HAND, ARENDALL, BEDSOLE, GREAVES & JOHNSTON

MORSE & MORSE

...oOo...

REQUEST FOR ADMISSION OF FACTS
BY SOJOURNER MOTOR FLEET, INC.

(Number and Title Omitted) (Filed Oct 7, 1965)

The plaintiff requests that the defendant, Sojourner Motor Fleet, Inc., by an officer or agent thereof, within

ten (10) days after service of this request to admit, for the purpose of this action only and subject to all pertinent objections to admissibility which may be interposed at the trial, the truth of the following facts:

1. Sojourner Motor Fleet, Inc., acquired a 1965 Plymouth Belvedere, R157-109935, on October 24, 1964, from Bill Speros Chrysler-Plymouth, Inc., in Memphis, Tennessee.

2. Sojourner Motor Fleet, Inc., acquired a 1960 Ford Falcon, OK215222190, in August, 1964.

3. Sojourner Motor Fleet, Inc., insured the vehicle referred to in Paragraph 2 above with Employers Fire Insurance Company on December 15, 1964.

4. Sojourner Motor Fleet, Inc., acquired a 1957 Plymouth, ID 16280968, in August, 1964.

5. Sojourner Motor Fleet, Inc., insured the vehicle referred to in Paragraph 4 above with Employers Fire Insurance Company on January 14, 1965.

6. Sojourner Motor Fleet, Inc., acquired a 1959 English Ford, ID204E145072, in June, 1964.

7. Sojourner Motor Fleet, Inc., insured the vehicle referred to in Paragraph 6 above with Employers Fire Insurance Company on December 15, 1964.

8. Sojourner Motor Fleet, Inc., acquired a 1955 Pontiac, IDC755H18650 in June, 1964.

9. Sojourner Motor Fleet, Inc., insured the vehicle

referred to in Paragraph 8 above with Employers Fire Insurance Company on December 15, 1964, said vehicle being erroneously described in said insurance policy as a 1956 Pontiac, C755H1 650.

10. On October 24, 1964, Sojourner Motor Fleet, Inc., did not insure all vehicles owned by it with American Liberty Insurance Company.

11. On October 30, 1964, Sojourner Motor Fleet, Inc., did not insure all vehicles owned by it with American Liberty Insurance Company.'

12. By endorsements to its policy of insurance with American Liberty Insurance Company, Sojourner Motor Fleet, Inc., added many more automobiles to said policy than it deleted from said policy.

13. By endorsements to its policy of insurance with American Liberty Insurance Company, Sojourner Motor Fleet, Inc., added sixteen (16) vehicles to said policy and deleted four (4) vehicles from said policy.

14. Sojourner Motor Fleet, Inc., in making additions to its policy of insurance with American Liberty Insurance Company, never specifically requested that the added automobile "replace" another automobile already listed on said policy.

15. When adding a 1965 Plymouth Belvedere, R157-109935, to its policy of insurance with American Liberty Insurance Company, Sojourner Motor Fleet, Inc., did not specifically

request that said 1965 Plymouth Belvedere "replace" another automobile already listed on said policy.

16. The 1965 Plymouth Belvedere, R157-109935, did not, in fact, replace another automobile already listed on the policy of insurance which Sojourner Motor Fleet, Inc., held with American Liberty Insurance Company.

Please take notice that a copy of such admissions must be served upon the undersigned with ten (10) days after service of these requests for admissions, which service is complete upon mailing under Rule 5, Federal Rules of Civil Procedure.

S/ Paul W. Brock
Paul W. Brock
Attorney for Plaintiff
622 First National Bank
Building
Mobile, Alabama

DATED October 6, 1965.

Of Counsel:

HAND, ARENDALL, BEDSOLE, GREAVES & JOHNSTON

MORSE & MORSE

...oOo...

NOTE: Deposition of Joy Guyton Deese, Deposition of Fredric B. Schultz, Deposition of J. A. Perkerson, Deposition of Mrs. Betty Sue Carney, Deposition of Doyal J. Brown, Jr. - Omitted - filed in their original forms.

...oOo...

ANSWER TO REQUEST FOR ADMISSION OF FACTS BY CONGRESS OF RACIAL EQUALITY

(Number and Title Omitted) (Filed Oct 15, 1965)

Comes now the Congress of Racial Equality by its attorney and answers plaintiff's request for admission of facts, to wit:

1. Defendant denies that Bikiel F. Flowers was a voluntary worker for the Congress of Racial Equality in October, 1964.

2. Defendant denies that Bikiel F. Flowers was a salaried employee of Congress of Racial Equality in October, 1964.

3. Defendant can neither admit or deny that Bikiel F. Flowers was driving a 1964, M#2141-321259, on October 16, 1964, because defendant has no knowledge of that fact.

4. Defendant can neither admit or deny that Bikiel F. Flowers was driving a 1964 Plymouth, M#2141-321259, on October 16, 1964, and was involved in an automobile accident on said date in Columbus, Mississippi because defendant has no knowledge of that fact.

5. Defendant can neither admit or deny that a 1964 Plymouth, M#2141-321259 was owned by Sojourner Motor Fleet, Inc. on October 16, 1964, because defendant has no knowledge of that fact.

S/ R. Jess Brown
R. Jess Brown
Alvin J. Bronstein
603 N. Farish Street
Jackson, Mississippi

Attorneys for Defendant
Congress of Racial Equality

...oOo...

ANSWERS OF PLAINTIFF, AMERICAN LIBERTY INSURANCE COMPANY, TO INTERROGATORIES PROPOUNDED BY GROVER CLEVELAND HARRISON, SOJOURNER MOTOR FLEET, INC., AND STUDENT NONVIOLENT COORDINATING COMMITTEE

(Number and Title Omitted) (Filed Oct 20, 1965)

1. Richard W. Edens, 1401 South 20th Street, Birmingham, Alabama.

2. June 16, 1953.

3. May 31, 1962.

4. Yes.

5. American Liberty Insurance Company, 1401 South 20th Street, Birmingham, Alabama.

6. Yes.

7. Retail Credit Company - 10/12/64.

8. American Liberty Insurance Company.

9. J. Ed. Morneau Insurance Claims, Shreveport, Louisiana, 12/14/64; Wiley Buntin, Columbus, Mississippi, 12/28/64; Overby & Company, Atlanta, Georgia, 3/1/65; McBrayer Adjustment Company, Memphis, Tennessee, 1/4/65; McCurdie & MacDermott, Hattiesburg, Mississippi, 1/29/65; I. J. Parkerson, Company Adjuster, Atlanta, Georgia, 1/6/65.

10. 12/7/64, Report from Casualty Underwriters, Inc., Decatur, Georgia.

11. May 31, 1962.

12. Yes.

13. Casualty Underwriters, Inc., Decatur, Georgia.

14. June 1, 1962, with subsequent changes furnished thereafter.

15.(a) The notation was made by I. B. Williamson, the notation means that the document was received in his department on that day and that he saw the document on that day. (b) The notation was made by Bruce Hinkle, the notation means that the document was received in his department on that day and that he saw the document on that day.

16. $216 annual premium including $10 for Uninsured Motorist Coverage.

17. Yes, when all owned vehicles are insured.

18. Insuring Agreements I (Coverage a), II, III, IV, VII; Conditions 18, 22, 27.

S/ Richard W. Edens

A F F I D A V I T

STATE OF ALABAMA:

COUNTY OF JEFFERSON:

Before me, the undersigned authority, in and for said County in said State, personally appeared Richard W. Edens, known to me, who being by me first duly sworn, deposes and says that he is the President of American Liberty Insurance Company, a corporation, plaintiff in the above-styled cause, and that the above and foregoing answers to interrogatories made by him are true and correct.

AMERICAN LIBERTY INSURANCE COMPANY

S/ Richard E. Edens
By: Richard W. Edens, President

Sworn to before me this

18th day of October, 1965.

S/ Joan M. Brooks
Notary Public, Jefferson County, Alabama

My Commission Expires March 12, 1968

...oOo...

MOTION FOR AN ORDER STRIKING OUT THE DEFENDANT COFO'S PLEADING AND ENTERING JUDGMENT BY DEFAULT

(Number and Title Omitted) (Filed Nov 1, 1965)

Plaintiff moves the court for an order striking out the defendant COFO's pleading and entering judgment by default in favor of plaintiff for the relief demanded in the complaint, and in support of said motion shows that on September 29, 1965, plaintiff served on defendant interrogatories pursuant to Rule 33 of the Federal Rules of Civil Procedure, which interrogatories are now on file in the office of the Clerk of this Court, that more than fifteen (15) days have elapsed and defendant has willfully failed to answer or object to said interrogatories.

S/ W.Ramsey McKinney, Jr.
W.Ramsey McKinney, Jr.

S/ Paul W. Brock
Paul W. Brock
622 First National Bank Building
Mobile, Alabama

S/ George Morse
George Morse

Dated 29th day of October, 1965.

Of Counsel:

HAND, ARENDALL, BEDSOLE, GREAVES & JOHNSTON

MORSE & MORSE

...oOo...

ORDER SUSTAINING ORDER STRIKING OUT THE DEFENDANT, COFO's PLEADING AND ENTERING JUDGMENT BY DEFAULT

(Number and Title Omitted) (Filed Nov 8, 1965)

This cause coming on to be heard on motion of American Liberty Insurance Company for an order striking out the defendant, COFO's pleading and entering judgment by default, and upon argument of counsel, it appears that said motion should be sustained to the following extent:

(1) There is hereby assessed against Council of Federated Organizations an attorney's fee in the amount of $250.00 to be paid to American Liberty Insurance Company, P. O. Box 123, Mobile, Alabama, within ten days from the date of this order.

(2) Interrogatories propounded by American Liberty Insurance Company against the defendant, Council of Federated Organizations, shall be answered within fifteen days from the date of this order.

Ordered in Jackson, Mississippi this 8th day of November, 1965.

S/ Harold Cox
U. S. District Judge

...oOo...

MOTION OF PLAINTIFF TO STRIKE

(Number and Title Omitted) (Filed Nov 10, 1965)

Plaintiff moves the Court for an order striking out the defendant Sojourner Motor Fleet, Inc.'s pleading and entering judgment by default in favor of plaintiff for the relief demanded in complaint. In support of said motion plaintiff shows that on September 29, 1965, plaintiff served on defendant Sojourner Motor Fleet, Inc. interrogatories pursuant to Rule 33 of the Federal Rules of Civil Procedure; that, allowing three additional days for service by mail, the answers to said interrogatories were due on October 16, 1965; that, in an effort to accommodate defendant Sojourner Motor Fleet, Inc., plaintiff's counsel agreed to allow one extra week from the due date within which to answer said interrogatories; that as a result of said agreement said interrogatories were due on October 23, 1965; that by letter dated October 30, 1965 plaintiff's counsel advised counsel for defendant Sojourner Motor Fleet, Inc., that the answers to said interrogatories had not been received and that the time for serving said answers had elapsed. A copy of said letter is attached hereto as Exhibit "1." Plaintiff alleges that defendant Sojourner Motor Fleet, Inc. has willfully failed to answer or object to said interrogatories.

S/ W. Ramsey McKinney, Jr.
W. Ramsey McKinney, Jr.

DATED this 6th day of November, 1965.

S/ Paul W. Brock
Paul W. Brock
622 First National Bank Building
Mobile, Alabama

S/ George Morse
George Morse

Of Counsel:

HAND, ARENDALL, BEDSOLE, GREAVES & JOHNSTON

MORSE & MORSE

...oOo...

NOTE: Letter to Hollowell, Ward, Moore and Alexander dated October 30, 1965- Omitted- Filed in its Original Form.

...oOo...

MOTION FOR ORDER THAT FACTS BE TAKEN AS ESTABLISHED

(Number and Title Omitted) (Filed Nov 10, 1965)

Plaintiff represents to the Court as follows:

1. On October 6, 1965, plaintiff served on defendant Sojourner Motor Fleet, Inc., a request for admission of facts pursuant to Rule 36 of the Federal Rules of Civil Procedure. A copy of said request for admission was filed with the Clerk of this Court, together with certificate of service. A copy of said request is attached hereto, marked "Exhibit A." No denial, admission, or other answer to said request has been served upon plaintiff by defendant Sojourner Motor Fleet, Inc. More than ten days have elapsed since the service of said request for admission of facts pursuant to Rule 36.

WHEREFORE, plaintiff moves the Court for an order establishing as admitted the said facts set forth in said request for admission.

S/ W. Ramsey McKinney, Jr.
W. Ramsey McKinney, Jr.

DATED this 6th day of November, 1965

S/ Paul W. Brock
Paul W. Brock
622 First National Bank Building
Mobile, Alabama

S/ George Morse
George Morse

Of Counsel:

HAND, ARENDALL, BEDSOLE, GREAVES & JOHNSTON

MORSE & MORSE

...oOo...

* * * * *

NOTE: Request for Admission of Facts by Sojourner Motor Fleet, Inc. - Omitted- Filed in its Original Form.

...oOo...

ANSWERS OF DEFENDANT SOJOURNER MOTOR FLEET, INC., TO PLAINTIFF'S REQUESTS FOR ADMISSION

(Number and Title Omitted) (Filed Nov 12, 1965)

1. True.
2. True.
3. True.
4. For want of sufficient information or knowledge and after due investigation, defendant can neither admit

nor deny the truth or falsity of this request.

5. True.

6. False.

7. True.

8. False.

9. True, except that any error in description is not attributable to defendant.

10. For want of sufficient information or knowledge and after due investigation, defendant can neither admit nor deny the truth or falsity of this request.

11. For want of sufficient information or knowledge and after due investigation, defendant can neither admit nor deny the truth or falsity of this request.

12. Probably true.

13. Probably true.

14. Probably true.

15. Probably true.

16. Probably true.

SOJOURNER MOTOR FLEET, INC.

BY: S/ Ruby Doris Robinson
MRS. RUBY DORIS SMITH ROBINSON
CLERK AND TREASURER

AFFIDAVIT

STATE OF GEORGIA:

COUNTY OF FULTON:

Personally appeared, MRS. RUBY DORIS SMITH ROBINSON, before the undersigned officer authorized by law to administer oaths, and first being duly sworn, deposes and says that she is the Clerk and Treasurer of the Sojourner Motor Fleet, Inc., one of the defendants in the above and foregoing civil action, and that the above and foregoing answers to plaintiff's requests for admission made by her are true and correct.

SOJOURNER MOTOR FLEET, INC.
BY: S/ Ruby Davis S. Robinson
MRS. RUBY DORIS SMITH ROBINSON,
CLERK AND TREASURER

Subscribed and sworn to
before me, this 10th
day of November, 1965.

S/ Alice M. Lewis
NOTARY PUBLIC

Notary Public, Georgia State at Large
My Commission Expires June 24, 1968
(Seal)

...oOo...

ANSWERS OF DEFENDANT SOJOURNER MOTOR FLEET, INC. TO PLAINTIFF'S INTERROGATORIES

(Number and Title Omitted) (Filed Nov 12, 1965)

1. (a) July 10, 1964.

   (b) Purchase.

   (c) Late August or early September, 1964.

   (d) Inoperative.

   (e), (f), (g) Require no answer.

2. (a) August 27, 1964.

   (b), (c) Unknown.

   (d) Inoperative.

   (e), (f), Unknown.

   (g) Inoperative, mechanical difficulty.

3. (a) August 21, 1964.

   (b), (c), Unknown.

   (d) Inoperative.

   (e), (f), Unknown.

   (g) Inoperative, mechanical difficulty.

4. (a), (b), (c), (d), (e), (f), (g), Defendant lacks information with which to answer this interrogatory.

5. (a) August 19, 1964.

   (b) Purchase.

   (c) Unknown.

   (d) Installment contract.

   (e), (f), (g) Require no answer.

6. (a) July 31, 1964.

(b) Unknown.

(c) Abandoned.

(d) Inoperative.

(e), (f), (g) Require no answer.

7. (a) October 9, 1964.

(b) Unknown.

(c) Abandoned in October, 1964.

Auctioned December 7, 1964.

(d) Inoperative.

(e), (f), (g) Require no answer.

8. (a) Never acquired.

(b) Prospective gift.

(c), (d), (e), (f), (g), Require no answer.

9. (a) 1963

(b) Probably a gift,

(c) Abandoned, date unknown.

(d), (e), (f), (g), Require no answer.

10. (a) Summer 1964.

(b) Purchase.

(c) Early 1965.

(d) Junk

(e) No.

(f) Requires no answer.

(g) Inoperative - junk.

11. (a) November 29, 1965.

(b) Probably purchase.

(c) Unknown.

(d) Inoperative.

(e), (f), (g), Require no answer.

12. Defendant is unable to answer this interrogatory for want of adequate information.

13. (a), (b), (c), (d), (e), (f), (g), No record of actual ownership.

14. (a), (b), (c), (d), (e), (f), (g), Defendant has no record of this vehicle.

15. (a) Summer 1965.

(b) Gift.

Defendant lacks information with which to answer (c), (d), (e), (f), (g) of interrogatory No. 15.

16. (a) Summer 1964.

(b) Gift.

(c) Before end of Summer 1964.

(d) Beyond repair.

(e), (f), (g) Require no answer.

17. (a) December 10, 1964.

(b) Probably gift.

(c) Unknown.

(d), (e), (f), (g) Require no answer.

18. Same question as No. 13, above; therefore, defendant makes the same answer.

19. (a) Unknown.

(b) Gift.

(c), (d), Require no answer.

(e) No.

(f) Requires no answer.

(g) Inoperative; mechanical defects.

20. (a) Unknown.

(b) Probably gift.

(c), (d) Unknown.

(e) Unknown.

(f) Unknown.

(g) Not known whether disposed of before October 24, 1964, but inoperative. Mechanical defects.

21. (a) Unknown.

(b) Probably gift.

(c), (d), (e), (f) Unknown.

(g) Not known whether disposed of before October 29, 1964, but inoperative. Parts removed.

22, 23, 24, 25, 26, 27. At this time, defendant lacks sufficient information to answer (a), (b), (c), (d), (e), (f), (g) of these interrogatories. Defendant, on information and belief, states that these vehicles were inoperative due to numerous causes.

28. (a) Unknown.

(b) Gift.

(c), (d), (e), (f), (g) Unknown.

29. (a) In August, 1964.

(b) Purchase.

(c) Inapplicable.

(d) Requires no answer.

(e) Probably garaged.

(f) Virginia. About two months.

(g) Probably operative. Collision, damage.

30. Defendant is unable to answer (a) through (g) of this interrogatory due to plaintiff's failure to completely identify this vehicle.

31. Defendant has no records relating to the vehicle identified in this interrogatory and, therefore, cannot answer (a) through (g) of this question.

SOJOURNER MOTOR FLEET, INC.

BY: S/ Ruby Doris S. Robinson
MRS. RUBY DORIS SMITH ROBINSON,
CLERK & TREASURER

AFFIDAVIT

STATE OF GEORGIA:
COUNTY OF FULTON:

Personally appeared, MRS. RUBY DORIS SMITH ROBINSON, before the undersigned officer authorized by law to administer

oaths and first being duly sworn, deposes and says that she is the Clerk and Treasurer of the Sojourner Motor Fleet, Inc., one of the defendants in the above-numbered civil action, and that the above and foregoing answers to interrogatories made by her are true and correct.

SOJOURNER MOTOR FLEET, INC.

BY: S/ Ruby Doris S. Robinson
MRS. RUBY DORIS SMITH ROBINSON,
CLERK AND TREASURER

(SEAL)

Subscribed and sworn to before me,
this 19th day of November, 1965.

S/ Alice M. Lewis
NOTARY PUBLIC

Notary Public, Georgia State of Large

My Commission Expires June 24, 1968

(Seal)

...oOo...

MOTION OF DEFENDANTS GROVER CLEVELAND HARRISON, STUDENT NON-VIOLENT COORDINATING COMMITTEE, AND THE SOJOURNER MOTOR FLEET, INC., TO DISMISS

(Number and Title Omitted) (Filed Nov 12, 1965.

Defendants, GROVER CLEVELAND HARRISON, STUDENT NON-VIOLENT COORDINATING COMMITTEE, and SOJOURNER MOTOR FLEET, INC., move this Honorable Court for an order dismissing plaintiff's complaint and this civil action. As grounds therefore, defendants aver:

1. The Court lacks jurisdiction over the civil action alleged in plaintiff's complaint due to a lack of total diversity of citizenship between all parties plaintiff and all parties defendant. Plaintiff and defendant Grover Cleveland Harrison are both citizens of the State of Alabama.

2. This motion is based upon (a) the admission of the plaintiff in paragraph one (1) of its complaint that it "is a corporation organized and existing under the laws of the State of Alabama, with its principal place of business in the City of Birmingham, Alabama; (B) the deopsition of Grover Cleveland Harrison, and (C) the verified allegations of this motion.

WHEREFORE, defendants move the Court for an order dismissing the complaint and the civil action therein alleged with prejudice and costs taxes against the plaintiff.

S/ Howard Moore, Jr.
HOWARD MOORE, JR.
859 1/2 HUNTER ST., N. W.
ATLANTA, GEORGIA 30314

EDDIE H. TUCKER
115 1/2 NORTH FARISH STREET
JACKSON, MISSISSIPPI

ATTORNEYS FOR DEFENDANTS

VERIFICATION

STATE OF GEORGIA:

COUNTY OF FULTON:

PERSONALLY appeared before the undersigned authority,

duly authorized by law to administer oaths, GROVER CLEVELAND HARRISON, who, after being duly sworn, deposes and says that he is the movant in the above and foregoing motion to dismiss, and that the facts alleged therein are true.

S/ Grover Cleveland Harrison
GROVER CLEVELAND HARRISON

Subscribed and sworn to before me,

this 10th day of NOVEMBER, 1965.

S/ Alice M. Lewis

Notary Public, Georgia State at Large

My Commission Expires June 24, 1968

NOTARY PUBLIC

(SEAL)

...oOo...

DEFENDANT'S MOTION FOR DEFAULT JUDGMENT

(Number and Title Omitted) (Filed Nov 29, 1965)

Now comes the defendant, Council of Federated Organizations, and moves the Court to enter a default judgment or what other order or judgment as may be proper and just under the circumstances, without prejudice to the rights of any other defendant, and in support of its motion would show unto the court the following, to-wit:

1. That the defendant has been ordered by this court to answer certain interrogatories and to pay attorney fees to the plaintiff.

2. That the defendant is unable to comply with the order of this court in as much as it has ceased to exist and therefore has no offficers or agents, and further there are not funds with which the attorney fees can be paid.

S/ L. H. ROSENTHAL
L. H. ROSENTHAL

...oOo...

AMENDMENT OF GROVER CLEVELAND HARRISON, SOJOURNER MOTOR FLEET, INC., AND STUDENT NON-VIOLENT COORDINATING COMMITTEE TO THEIR MOTION FOR WANT OF JURISDICTION.

(Number and Title Omitted) (Filed)

Defendants, GROVER CLEVELAND HARRISON, SOJOURNER MOTOR FLEET, INC., AND STUDENT NON-VIOLENT COORDINATING COMMITTEE, amend their previously filed motion to dismiss by adding the following paragraph to be known as paragraph 3; namely:

"3. Further, defendant Student Nonviolent Coordinating Committee is an unincorporated association with its principal place of business and office in Atlanta, Fulton County, Georgia. Certain of defendants' members and officers are citizens of the State of Alabama. In support of the allegations of this paragraph, defendants attach a Certificate of Search from the Secretary of State of the State of Georgia and the affidavit of John Lewis, as Exhibits "A" and "B", respectively."

WHEREFORE, defendants move this Court for an order

allowing this Amendment and ordering plaintiff's complaint dismissed with prejudice and costs taxed against the plaintiff.

S/ Howard Moore, Jr.
HOWARD MOORE, JR.

EDDIE H. TUCKER

ATTORNEYS FOR DEFENDANTS

859 1/2 Hunter St., N. W.
Atlanta, Georgia 30314

115 1/2 North Farish St.
Jackson, Mississippi

...oOo...

State of Georgia

STATE OF GEORGIA 1776

OFFICE OF SECRETARY OF STATE

I, Ben W. Fortson, Jr., Secretary of State of the State of Georgia, do hereby certify that

on searching the corporation records in this office, we fail to find any record of a corporation by the name of "STUDENT NON-VIOLENT COORDINATING COMMITTEE" as the same appears of file and record in this office.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of office, at the Capitol, in the City of Atlanta, this 24th day of November in the year of our Lord One Thousand Nine Hundred and Sixty Five and of the Independence of the United States of America the One Hundred and Ninetieth.

Ben W. Fortson Jr.

SECRETARY OF STATE, EX-OFFICIO CORPORATION COMMISSIONER OF THE STATE OF GEORGIA

GEORGIA, FULTON COUNTY:

AFFIDAVIT

Personally appeared JOHN LEWIS before the undersigned officer authorized by law to administer oaths and first being duly sworn upon oath, depose and say:

I am Chairman of the Student Nonviolent Coordinating Committee (hereinafter SNCC). SNCC is an unincorporated association. Its principal place of business is located at 360 Nelson Street, Southwest, Atlanta, Fulton County, Georgia.

Based upon my own personal knowledge and from examination of payroll records kept and maintained by SNCC, I know that on April 7, 1965 Willie M. Scott, Willie Squire, and Terry Shaw, all citizens of the State of Alabama, residing in the City of Selma, were members of SNCC. Willie M. Scott was at that time receiving a subsistence allowance for services rendered as an office worker in Selma, Alabama. Willie Squire was at that time and continues to be employed by SNCC as a photographer. Terry Shaw was at that time and continues in the employment of SNCC as a Field Secretary, and in the formulation and execution of its programs and policies.

I am a citizen of the State of Alabama and domiciled in the City of Troy, Alabama, where I was born and reared. I am one of the founding members of SNCC and have served

as its Chariman for the past two years.

This affidavit is made upon the basis of facts within my own personal knowledge and to be used in legal proceedings.

S/ John Lewis
JOHN LEWIS

Subscribed and sworn to before me,
this 27th day of November, 1965.

S/ Alice M. Lewis
NOTARY PUBLIC

Notary Public, Georgia State at Large
My Commission Expires June 24, 1968
(Seal)

EXHIBIT "B"

...oOo...

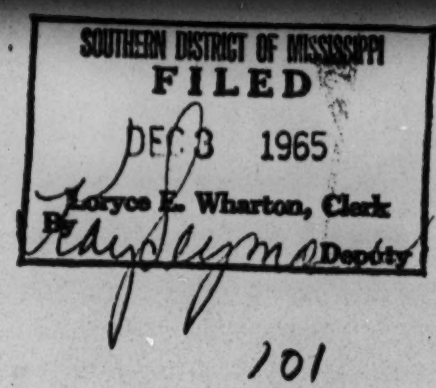
SOUTHERN DIVISION
CIVIL ACTION NO. 3040

FULTON COUNTY
ATLANTA, GEORGIA

FILED
1965
Thomas J. Wheeler, Clerk

No. 225

SOUTHERN DIVISION
CIVIL ACTION NO. 3040



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VOTER REGISTRATION OFFICE
LEON G. HAY, CHIEF REGISTRAR
ROOM 108 • 165 CENTRAL AVENUE, S. W. • 30303 • TELEPHONE 522-5310

Certificate of Registration

TO WHOM IT MAY CONCERN:

Date 12-1-65

This is to certify that Grover Cleveland Harrison registered and qualified for voting purposes in this office on 11-15-63, giving age as 23. Date of birth shown on registration record is 5-6-40. Address shown on registration record is: Atlanta, Ga 250 Forrest Ave N.E. Apt #17

Place of birth Choctaw Ala.

Mother's maiden name Isla Debruce.

Attached hereto is a true and correct copy of the Registration Oath and voting record of said Grover Cleveland Harrison.

LEON G. HAY, CHIEF REGISTRAR
FULTON COUNTY, GEORGIA

No. 465

BY Joseph Horstein
Deputy

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LAST NAME	FIRST NAME	MIDDLE INITIAL	MAIDEN NAME
HARRISON	GROVER	C. (CLEVELAND)	SD-37

NUMBER	STREET NAME	CITY	ZONE	WARD	PRECINCT	C. D. DISTRICT	BOX
250	FORREST AVE. NE #17	ATLANTA	12	1	9		#3

AGE	18TH BIRTHDAY	BIRTH DATE	SEX	CITY PLACE OF BIRTH	COUNTY	STATE	COLOR EYES	COLOR HAIR	WEIGHT
23		5-6-40	M		CHOCTAW	ALA	BRN	BLK	156

HEIGHT	MOTHER'S MAIDEN NAME	FATHER'S NAME	OCCUPATION
5'6"	IOLA DEBRUCE	JAMES HARRISON	COOK, MAMMY'S SHANTY

DATE OF OATH	DATE WILL HAVE RESIDED 1 YR. STATE — 6 MOS. COUNTY	ASSISTANCE REQUIRED AS SET OUT CODE SEC. 34-1908
11-15-63	1-27-64 SAME	NO

I HEREBY SWEAR (AFFIRM) THAT THE INFORMATION APPEARING UNDER "OATH OF VOTER, GEORGIA-FULTON COUNTY" ON REVERSE SIDE OF THIS CARD IS TRUE.
SWORN TO AND SUBSCRIBED BEFORE ME

Thelma J. Arbiser — DEPUTY REGISTRAR

Grover C. Harrison — REGISTRANT'S SIGNATURE

DATE	CHANGE OF ADDRESS	WARD OR DISTRICT	CLERK

VOTING RECORD

DATE	INITIALS	INITIALS	INITIALS	INITIALS
1962	179656			
1963				
1964	JAR			
1965				
1966				
1967				
1968				
1969				
1970				
1971				
1972				
1973				
1974				
1975				
1976				
1977				
1978				

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250 | LAST NAME HARRISON | FIRST NAME GROVER | MIDDLE INITIAL C. (CLEVELAND)

OATH OF VOTER — GEORGIA, FULTON COUNTY

I do swear, or affirm, that I am a citizen of the United States of this State; that I am 18 years of age, or will be on the (date shown elsewhere on this card); that I have resided in this State for one year, and in this county for six months, immediately preceding the date of this oath, or will have so resided on the (date shown elsewhere on this card); that I believe I have the qualifications of an elector required by the Constitution of this State: that I am not registered in any other county; that I am not registered under any other name; that I have c[illegible]lly answered the questions appearing elsewhere on this card under the words: "Questions propounded to applicant"; that the information contained elsewhere on this card is true.

OATH OF REGISTERED VOTER TRANSFERRING INTO FULTON COUNTY:

I hereby swear (affirm) that I have resided in Fulton County for at least six months or will have resided in such county six months by the date of the next General Election. I further swear (affirm) that I have not become disqualified to vote since I registered in

_____county.
(County from which transferred)

This_____day of_____19_____ Signature_____

QUESTIONS PROPOUNDED TO APPLICANT

Have you ever been convicted in any court of competent jurisdiction of treason against the State, of embezzlement of public funds, malfeasance in office, bribery or larceny, or any crime involving moral turpitude, punishable by the laws of this State with imprisonment in the penitentiary? If so, what was the offense, the place and court of conviction and the approximate date? If so, and if pardoned, what was the date of pardon? Under what constitutional classification do you desire to make application for registration? This app[illegible]ion is APPROVED this_____day of NOV 15 1963 19_____.

FULTON COUNTY BOARD OF REGISTRARS

Donald Hay

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SOUTHERN DIVISION (Filed Dec 3, 1965)
CIVIL ACTION NO: 3040

AFFIDAVIT OF J. B. PHILLIPS III

STATE OF ALABAMA :

COUNTY OF CHOCTAW :

J. B. PHILLIPS III, being first duly sworn, deposes and says:

I am a citizen of the United States, and I am over the age of twenty-one (21) years. I have lived in Yantley, Alabama, for 41 years. Yantley has a population of approximately 400.

I have known Grover Cleveland Harrison and his family for many years but have not seen or heard from Grover Cleveland Harrison in over two (2) or three (3) years. Grover Cleveland Harrison has not lived in this community in over two (2) years.

S/ J. B. Phillips III

Sworn to and subscribed
before me on the 2 day
of Dec, 1965.

S/ Maybell Wilson
Notary Public, Choctaw
County, Alabama

My Commission Expires;
3/ 28/68

(Seal)

SOUTHERN DIVISION
CIVIL ACTION NO. 3040 (Filed Dec. 3, 1965)

AFFIDAVIT OF MOODY T. CRENSHAW

STATE OF ALABAMA:

COUNTY OF CHOCTAW:

MOODY T. CRENSHAW, being first duly sworn, deposes and says:

I am a citizen of the United States, and I am over the age of twenty-one (21) years, I have lived in Yantley, Alabama, for 21 years and have operated my store, Crenshaw's Store, in this town for 21 years. Yantley has a population of approximately 400.

I am generally familiar with all the residence of Yantley, Alabama, and have known Grover Cleveland Harrison and his family for many years. Grover Cleveland Harrison was born and reared in Yantley, Alabama, but has not lived in this area for several years. I have not personally seen Grover Cleveland Harrison in over three (3) years.

S/ Moody T. Crenshaw

Sworn to and subscribed
before me on the 2 day
of Dec. 1965.

S/ Myrtle Wilson
Notary Public, Choctaw
County, Alabama

My Commission Expires:
3/28/68 (Seal)

...oOo...

ORDER THAT THE ANSWER OF SOJOURNER MOTOR FLEET, INC. TO REQUEST FOR ADMISSIONS NOS. 12 through 16 be TREATED AS AN ADMISSION

(Number and Title Omitted) (Filed Dec 3, 1965)

This cause coming on this day to be heard on motion of the Plaintiff to require the defendant, Sojourner Motor Fleet, Inc., to elaborate or clarify its response to requests of the plaintiff for admissions Nos. 12 through 16, and to clarify its answer to interrogatory No. 11 propounded by the plaintiff to Sojourner Motor Fleet, Inc., and upon the motion of Grover Cleveland Harrison, Student Nonviolent Coordinating Committee, and Sojourner Motor Fleet, Inc., and upon argument of counsel, it appears to the Court and it is so ordered that the answer of Sojourner Motor Fleet, Inc. to requests for admissions Nos. 12 through 16 be treated as an admission of the truthfulness of the facts stated in requests for admissions Nos.12 through 16; that counsel endeavor to clarify any deficiencies in answers to interrogatories by correspondence between themselves; that with respect to the motion of Grover Cleveland Harrison, Student Nonviolent Coordinating Committee and Sojourner Motor Fleet, Inc., plaintiff shall have five days from date of this order within to file affidavits or other evidence in opposition to said motion to dismiss, and movants, Grover Cleveland Harrison, Student Nonviolent Coordinating Committee and Sojourner Motor Fleet, Inc., shall have ten days from date of this

order to file any counter-affidavits or other evidence in support of said motion to dismiss.

ORDERED in Jackson, Mississippi, this 3rd day of December, 1965.

S/ Harold Cox
UNITED STATES DISTRICT JUDGE

...oOo...

OPINION OF COURT

(Number and Title Omitted) (Filed Feb 17, 1966)

This is a suit for a declaratory judgment on a casualty insurance policy issued by the plaintiff to Sojourner Motor Fleet, Inc. Most of the evidence before the Court on the motion to dismiss for lack of jurisdiction hinges around the residence of defendant, Grover Cleveland Harrison. It is established to the satisfaction of the Court that the residence of that defendant is Atlanta, Georgia and not Yantley, Alabama. But, throughout this proceeding and upon a careful examination of this entire file, it is not made apparent that this Court has any jurisdiction of this case. The plaintiff is a resident of Alabama. The defendants certainly do not all live in Mississippi. Yet, a suit cannot be maintained in this Court on diversity jurisdiction unless either all of the plaintiffs or all of the defendants reside in Mississippi. That venue requirement is jurisdictional. 28 USC 1958 Edition §1391. A consideration of 28 USC 1958 Edition §1404 (a) does not suggest a transfer of this case to another

district under the circumstances. The case will be dismissed for lack of jurisdiction.

February 17, 1966 S/ Harold Cox
UNITED STATES DISTRICT JUDGE

...oOo...

JUDGMENT

(Number and Title Omitted) (Filed Feb 17, 1966)

THE COURT having heard and considered this case on motion to dismiss for lack of jurisdiction, and being of the opinion that it has no jurisdiction herein for the reasons stated in a memoranda of even date herewith;

IT IS ORDERED AND ADJUDGED that this Court has no jurisdiction of this case and that it is, therefore, dismissed at the cost of the plaintiff to be taxed according to law and for which process may issue.

ORDERED AND ADJUDGED, this February 17, A.D., 1966.

S/ Harold Cox
UNITED STATES DISTRICT JUDGE

...oOo...

VARIOUS MOTION OF PLAINTIFF

(Number and Title Omitted) (Filed)

Comes now the plaintiff, American Liberty Insurance Company, and files the following separate and several motions:

I

To vacate and set aside the judgment of the court of

February 17, 1966, dismissing the above cause.

II

In the alternative and in furtherance of justice, to transfer said cause to the United States District Court of either the Southern or Northern District Alabama, under the provision of Title 28, Section 1406(a), U.S.C., or to any judicial district in which it could have been brought.

III

In the alternative, to set aside the judgment of the court of February 17, 1966, dismissing said cause, and to permit plaintiff to amend its Bill of Complaint, without prejudice, by striking the Congress of Racial Equality as a defendant and any defendant as to which venue would be improper and which defendant has not waived its right to object to venue.

IV

To amend said judgment of February 17, 1966, dismissing said cause so as to provide that the same shall be without prejudice to the plaintiff as to any of the issues of said cause or as to any issues which could have been litigated in said cause.

V

To set this cause for trial following the court's ruling on these motions, separately.

GROUNDS

Plaintiff assigns the following separate and several grounds in support of each of the foregoing motions, separately and severally:

I

For that said judgment is contrary to law.

II

For that venue is proper in this cause and this court has jurisdiction thereof.

III

For that venue is proper under the provisions of Title 28, Section 1391(c), which is applicable to corporate plaintiffs as well as to corporate defendants. Plaintiff has at all times pertinent hereto been licensed to do business in the State of Mississippi, and has had a statutory agent for the service of process in the State of Mississippi.

IV

For that this cause arises out of the operation of an automobile and, hence, venue is proper under the provisions of Title 28, Section 1391(s), U.S.C.

V

For that there has been a waiver of the right to object to venue by some or all of the defendants herein.

Hand, Arendall, Bedsole, Greaves
and Johnston
First National Bank Bldg.,
Mobile, Alabama

MORSE AND MORSE
Hatten Bldg., Gulfport,
Mississippi
Attorneys for Plaintiff

BY: S/ Illigible

...oOo...

NOTE: Bill of Costs - Omitted - Filed in Its Original Form.

...oOo...

NOTICE OF FILING

(Number and Title Omitted) (Filed Mar 2, 1966)

TO: L. H. Rosenthal, Esq.
Suite 406
518 E. Capitol Street
Jackson, Mississippi

Benjamin E. Smith, Esq.
1006 Baronne Building
505 Baronne Street
New Orleans, Louisiana

Attorneys for Defendant
Council of Federated Organizations

Jack H. Young, Esq.
115 1/2 North Farish Street
Jackson, Mississippi

Attorney for Defendants
National Association for the Advancement of Colored People and Southern Christian Leadership Conference

James Armstrong Walters, Esq.
519 North 2d Avenue
Columbus, Mississippi

Attorney for Defendants
Arlena L. Smith, Bobbie L. McMullen, and Betty L. Goldie

Alvin J. Bronstein, Esq.
602 North Farish Street
Jackson, Mississippi

Jess Brown, Esq.
125-1/2 North Farish Street
Jackson, Mississippi

Attorneys for Defendant
Congress of Racial Equality

Please take notice that the originals of the attached affidavit and certification of license have this day been filed in the United States District Court's office in Biloxi, Mississippi, in support of plaintiff's motions heretofore filed in the above-styled cause on the 25th day of February, 1966.

This 28th day of February, 1966.

Morse and Morse
Hatten Building
Gulfport, Mississippi

HAND, ARENDALL, BEDSOLE,
GREAVES & JOHNSTON
First National Bank Bldg.
Mobile, Alabama

Attorneys for Plaintiff

By: S/ Harold P. Parkman

...oOo...

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State of Mississippi

Jackson

I, WALTER DELL DAVIS, **COMMISSIONER of INSURANCE**, OF THE STATE OF **MISSISSIPPI**, DO HEREBY CERTIFY THAT

the AMERICAN LIBERTY INSURANCE COMPANY of Birmingham, Alabama, was admitted to the State of Mississippi in July 1954, and is currently licensed, according to the records of the Mississippi Insurance Department.

Given under my hand and seal of office, this the 24th day of February, 1966.

COMMISSIONER of INSURANCE

By Wooley D. Box

WOOLEY D. BOX
DEPUTY COMMISSIONER OF INSURANCE

AFFIDAVIT

STATE OF ALABAMA
COUNTY OF JEFFERSON

THIS DAY personally appeared before me Joan M. Brooks, Notary Public in and for said county in said State, Norman A. Williams, who is known to me and who is known to me to be the Secretary, of American Liberty Insurance Company and who, being by me first duly sworn, doth depose and say as follows: I am the Secretary of American Liberty Insurance Company and, as such, am authorized to make this affidavit.

American Liberty Insurance Company (called AMERICAN LIBERTY) is presently licensed to do business in the State of Mississippi and has been so licensed at all times since 1954. Attached hereto is EXHIBIT "A", the appointment by said company in accordance with the appropriate resolution of its Board of Directors of the Insurance Commissioner of the State of Mississippi and of his successor in office as agent for service of process.

Also attached are true copies of the following:

As EXHIBIT "B", the designation by AMERICAN LIBERTY of Mr. W. L. Evans, Sr., of the Hunt-Evans Insurance Agency, as Attorney for Service of Process in addition to the Insurance Commissioner of the State of Mississippi;

As EXHIBIT "C", the first Certificate of Compliance issued by the State of Mississippi to AMERICAN LIBERTY for the year from July 6, 1954 to March 1, 1955.

As EXHIBIT "D", the Certificate of Compliance issued by the State of Mississippi to AMERICAN LIBERTY for the year from March 1, 1964 to March 1, 1965; and

As EXHIBIT "E", the Certificate of Compliance issued by the State of Mississippi to AMERICAN LIBERTY for the year from March 1, 1965 to March 1, 1966.

AFFIANT DOES FURTHER STATE that AMERICAN LIBERTY has at all times pertinent to this suit been duly licensed by the State of Mississippi to transact business therein, in accordance with the laws of such State and has at all times had residing within said State one or more agents for the service of process.

Signed this 25 day of February, 1966.

AMERICAN LIBERTY INSURANCE COMPANY

By: Norman A. Williams
Norman A. Williams, Secretary

Sworn to and subscribed before me
this 25 day of February, 1966.

Joan M. Brooks
Notary Public, Jefferson County, Alabama

Notary Public Alabama State at Large
My Commission Expires March 12, 1968

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State of Mississippi
INSURANCE DEPARTMENT

KNOW ALL MEN BY THESE PRESENTS;

That the AMERICAN LIBERTY INSURANCE COMPANY Company, of the city of Birmingham and State of Alabama desiring to transact business in the State of Mississippi, in conformity with the laws thereof, does hereby make, constitute and appoint WALTER DELL DAVIS, Insurance Commissioner of the State of Mississippi, and his successor in office, its true and lawful ATTORNEY in and for said State of Mississippi, upon whom all processes of law against said corporation in any action or legal proceeding may be served, subject to and in accordance with all the provisions of the statutes and laws of said State of Mississippi, now in force, and such other acts as may be hereafter passed amendatory thereof and supplementary thereto; and said company does hereby expressly agree that any and all lawful processes against it which may be served upon said WALTER DELL DAVIS, Insurance Commissioner, and his successor, shall be deemed valid personal service upon said company and shall be of the same force and validity as if served upon said company; and his authority shall continue in force and irrevocable so long as any liability of the said company remains outstanding in the said State of Mississippi, whether incurred before or since the making and execution of this instrument.

IN WITNESS WHEREOF, The said company in accordance with a resolution of its Board of Directors, duly passed on 19th day of May A. D. 19 54 (a certified copy of which is hereto attached), has to these presents affixed its corporate seal and caused the same to be subscribed and attested by its Vice President and Secretary, at the City of Birmingham in the State of Alabama on the 1st day of June A. D. 19 54.

Joseph R. Moore Vice President

Charles W. Caldwell Secretary

Certified copy of resolution duly passed by the Board of Directors of the AMERICAN LIBERTY INSURANCE COMPANY Insurance Company, on the 19th day of May A. D. 1954.

At a meeting of the Board of Directors of the AMERICAN LIBERTY Insurance Company, held on the 19th day of May A. D. 1954, at the office of the Company, a quorum of said Board was present, and on motion the following resolution was duly passed by said Board:

"Resolved, That this Company desiring to transact business in the State of Mississippi, in conformity with the laws thereof, does hereby authorize its President and Secretary, under the corporate seal of the Company to make, constitute and appoint the Insurance Commissioner of the State of Mississippi, and his successor in office, its true and lawful attorney in and for said State of Mississippi, upon whom all processes of law against said corporation in any action or legal proceeding may be served, subject to and in accordance with all the provisions of the statutes and laws of said State of Mississippi now in force, and such other acts as may be hereafter passed amendatory thereof and supplementary thereto; and for said Company to agree that any and all lawful processes against it which may be served upon said Insurance Commissioner, and his successor, shall be deemed valid personal service upon said Company and shall be of the same force and validity as if served upon said Company, and that this authority shall continue in force and irrevocable so long as any liability of the said Company remains outstanding in the State of Mississippi, whether incurred before or since the making and execution of this instrument."

I, Charles W. Cambrell, Secretary of the American Liberty Insurance Company of Birmingham, Alabama do hereby certify that the foregoing copy of the resolution of the Directors of said Company, authorizing the appointment of an attorney for the State of Mississippi, has been compared by me with the original in this office, and that the same is a true and correct copy thereof, and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the corporate seal of said Company, at the city of Birmingham this 1st day of June A. D. 1954

Charles W. Cambrell Secretary.

Note—Where the company is one of a foreign country, the Power of Attorney may be executed by the Manager or Attorney in the United States, accompanied by affidavit that it is within his authority under his Power of Attorney.

STATE OF MISSISSIPPI
COUNTY OF HINDS

a Notary Public in and for said County and State, do hereby certify that the foregoing instrument of writing, consisting of one page, is a true and correct copy of a resolution of the Secretary of State of Mississippi, duly passed by the Board of Directors of the AMERICAN LIBERTY INSURANCE COMPANY, to wit: that I have compared the same with the original thereof, and that it is a true and correct copy thereof; that the said instrument of writing was duly sworn to before me by the President and Secretary of said Company, respectively, and that the said President and Secretary, respectively, acknowledged the same to be their respective act and deed, and that they, respectively, signed the same for the purposes therein mentioned.

Given under my hand and official seal, this 12th day of July, 1971.

EDWARD COMMISSION EXPIRES
NOTARY PUBLIC

Certified copy of resolution duly passed by the Board of Directors of the AMERICAN LIBERTY INSURANCE COMPANY, on the 12th day of July, A. D. 1971.

At a meeting of the Board of Directors of the AMERICAN LIBERTY Insurance Company, held on the 12th day of July, A. D. 1971, at the office of the Company, a quorum of said Board was present, and on motion the following resolution was duly passed by said Board:

"Resolved, That this Company desiring to transact business in the State of Mississippi, in conformity with the laws thereof, does hereby authorize its President and Secretary, under the corporate seal of the Company to make, constitute and appoint the Insurance Commissioner of the State of Mississippi, and his successor in office, its true and lawful attorney in and for said State of Mississippi, upon whom all processes of law against said corporation in any action or legal proceeding may be served, subject to and in accordance with all the provisions of the statutes and laws of said State of Mississippi now in force, and such other acts as may be hereafter passed amendatory thereof and supplementary thereto; and for said Company to agree that any and all lawful

STATE of Alabama
County of Jefferson } ss.

On this 1st day of June A. D. 19[illegible], before me, the subscriber, a Notary Public, duly appointed to take the proof and acknowledgment of deeds and other instruments, came Joseph R. Moore Vice President, and Charles W. Gambrell Secretary, of the AMERICAN LIBERTY Insurance Company to me personally known to be the individuals described in and who executed the preceding instrument; and they each acknowledged the execution of the same; and being by me each sworn, severally and each for himself deposeth and saith, that they are the said officers of the Insurance Company aforesaid, and that the seal affixed to the preceding instrument is the corporate seal of said Company; and that said corporate seal and their signatures as such officers were duly affixed and subscribed to the said instrument by the authority and direction of said corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal; at the City of Birmingham the day and date first above written.

_____

STATE OF MISSISSIPPI

Insurance Department

KNOW ALL MEN BY THESE PRESENTS:

That the American Liberty Insurance Company Company of the city of Birmingham and State of Alabama desiring to transact business in the State of Mississippi, in conformity with the laws thereof, does hereby make, constitute and appoint, in addition to Walter Dell Davis, Insurance Commissioner of the State of Mississippi and his successors in office, Mr. W.L. Evans, Sr. Hunt-Evans Insurance Agency Greenville, Mississippi Mississippi, its true and lawful ATTORNEY in and for said State of Mississippi, upon whom all processes of law against said corporation in any action or legal proceeding may be served, subject to and in accordance with all the provisions of the statutes and laws of said State of Mississippi now in force, and such other acts as may be hereafter passed amendatory thereof and supplementary thereto; and said company does hereby expressly agree that any and all lawful processes against it which may be served upon said Mr. W.L. Evans, Sr., shall be deemed valid personal service upon said company and shall be of the same force and validity as if served upon said company; hereby waiving all claim of error by reason of such service and authorize said agent to acknowledge service of process for and on behalf of this company within the State of Mississippi; and revokes and annuls all previous agency appointments for service of process other than the Insurance Commissioner.

IN WITNESS WHEREOF, The said Company, in accordance with a resolution of its Board of Directors, duly passed on the 19th day of May A. D., 1954; had to these presents affixed its corporate seal and caused the same to be subscribed and attested by its President and Secretary, at the city of Birmingham, in the State of Alabama A. D., 1954

115 Inch Poplar

Fred A. Carnell — President

Charles W. Gambrell — Secretary

STATE of Alabama
County of Jefferson } ss.

On this 18th day of June A. D., 1954, before me, the subscriber, a Notary Public, duly appointed to take the proof and acknowledgment of deeds and other instruments, came Fred A. Carnell President, and Charles W. Gambrell Secretary, of the American Liberty Insurance Company to me personally known to be the individuals described in and who executed the preceding instrument; and they each duly acknowledged the execution of the same; and being by me each sworn, severally and each for himself deposeth and saith, that they are the said officers of the Insurance Company aforesaid, and that the seal affixed to the preceding instrument is the corporate seal of said Company; and that said corporate seal and their signatures as such officers were duly affixed and subscribed to the said instrument by the authority and direction of said corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal, at the City of Birmingham the day and date first above written.

Mary B. Johnson

STATE OF MISSISSIPPI

Insurance Department

KNOW ALL MEN BY THESE PRESENTS:

That the American Liberty Insurance Company Company

of the city of Birmingham and State of Alabama

desiring to transact business in the State of Mississippi, in conformity with the laws thereof, does hereby make, constitute and appoint, in addition to Walter Dell Davis, Insurance Commissioner of the State of Mississippi and his successors in office, Mr. W. L. Evans, Sr. Insurance Agent, Greenville, Mississippi

Mississippi, its true and lawful ATTORNEY in and for said State of Mississippi, upon whom all processes of law against said corporation in any action or legal proceeding may be served, subject to and in accordance with all the provisions of the statutes and laws of said State of Mississippi now in force, and such other, etc. as may be hereafter passed amendatory thereof and supplementary thereto, and said company does hereby expressly agree that any and all lawful processes against it which may be served upon said

Mr. W. L. Evans, Sr. shall be deemed valid personal service

upon said company and shall be of the same force and validity as if served upon said company; hereby waiving all claim or demand by reason of such service and authorizing said agent to acknowledge service of process for and on behalf of this company within the State of Mississippi; and revokes and annuls all previous agency appointments for service of process other than the Insurance Commissioner.

IN WITNESS WHEREOF, The said Company, in accordance with a resolution of its Board of Directors, duly passed on this 19th day of May A. D. 19 24; had to these presents affixed its corporate seal and caused the same to be subscribed and attested by its President and Secretary, in the city of Birmingham in the State of Alabama A. D. 19 24

CERTIFICATE of COMPLIANCE

STATE of MISSISSIPPI

DEPARTMENT of INSURANCE

I, the undersigned Commissioner of Insurance of the State of Mississippi, being the official charged by law with the supervision of insurance in said State, do hereby certify that

AMERICAN LIBERTY INSURANCE COMPANY
Birmingham, Alabama

has complied with all the requirements of the Laws of this State applicable to said company, and is authorized to transact the business of

FIRE and ALLIED LINES

including

INLAND MARINE and AUTOMOBILE PHYSICAL DAMAGE INSURANCE

in this State in accordance with the laws thereof, until the first day of March A.D., 1955

In Testimony Whereof, I hereto subscribe my name and affix the seal of my office, at the City of Jackson, Mississippi, this the Sixth day of July 1954.

Walter Dell Davis
Commissioner of Insurance

CERTIFICATE of COMPLIANCE

STATE OF MISSISSIPPI
DEPARTMENT OF INSURANCE

IT IS HEREBY CERTIFIED THAT the AMERICAN LIBERTY INSURANCE COMPANY

located at BIRMINGHAM, ALABAMA

has complied with all the requirements of the Laws of this State applicable to said company and is authorized to transact the business of:

(X) FIRE & ALLIED LINES	( ) AIRCRAFT
( ) MISCELLANEOUS CASUALTY	( ) BOILER & MACHINERY
( ) INDUSTRIAL FIRE	( ) LIVESTOCK
( ) CREDIT FIRE	( ) BURGLARY & THEFT
( ) FIDELITY	( ) PLATE GLASS
( ) SURETY	( ) HEALTH & ACCIDENT
( ) GUARANTY	( ) TITLE
( ) GENERAL LIABILITY	( ) CREDIT _____
(X) AUTO FIRE & PHYSICAL DAMAGE	( ) _____
( ) AUTO LIABILITY	( ) _____
( ) WORKMEN'S COMPENSATION	( ) _____
( ) INLAND MARINE	( ) _____
( ) OCEAN MARINE	( ) _____

in this State in accordance with the laws thereof, until the first day of March A.D., 1966.

IN TESTIMONY WHEREOF, I hereto subscribe my name and affix the seal of my office, at the City of Jackson, Mississippi, this the 1st day of March, 1965.

Walter Dell Davis
Commissioner of Insurance

CERTIFICATE of COMPLIANCE

STATE OF MISSISSIPPI
DEPARTMENT OF INSURANCE

IT IS HEREBY CERTIFIED THAT the AMERICAN LIBERTY INSURANCE COMPANY

located at BIRMINGHAM, ALABAMA

has complied with all the requirements of the Laws of this State applicable to said company and is authorized to transact the business of:

(X) FIRE & ALLIED LINES	( ) AIRCRAFT
( ) MISCELLANEOUS CASUALTY	( ) BOILER & MACHINERY
( ) INDUSTRIAL FIRE	( ) LIVESTOCK
( ) CREDIT FIRE	( ) BURGLARY & THEFT
( ) FIDELITY	( ) PLATE GLASS
( ) SURETY	( ) HEALTH & ACCIDENT
( ) GUARANTY	( ) TITLE
( ) GENERAL LIABILITY	( ) CREDIT
(X) AUTO FIRE & PHYSICAL DAMAGE	( )
( ) AUTO LIABILITY	( )
( ) WORKMEN'S COMPENSATION	( )
( ) INLAND MARINE	( )
( ) OCEAN MARINE	( )

in this State in accordance with the laws thereof, until the first day of March A.D., 1966.

IN TESTIMONY WHEREOF, I hereto subscribe my name and affix the seal of my office, at the City of Jackson, Mississippi, this the 1st day of March, 1965.

Walter Dell Davis
Commissioner of Insurance

NOTE: Various Motions of Plaintiff - Heretofore Copied on Page 108, and Motion for A Continuance of Plaintiff's Motion to Vacate and Set Aside the Judgment of the Court of February 17, 1966, Dismissing the Above Styled Cause - Omitted - Filed in Their Original Forms.

...oOo...

RESPONSE OF DEFENDANTS, GROVER CLEVELAND HARRISON, SOJOURNER MOTOR FLEET, INC. AND STUDENT NON-VIOLENT CO-ORDINATING COMMITTEE TO PLAINTIFFS MOTION TO VACATE AND SET ASIDE JUDGMENT OF THE COURT OF FEBRUARY 17, 1966.

(Number and Title Omitted) (Filed Mar 6, 1967)

Defendants Grover Cleveland Harrison, Sojourner Motor Fleet, Inc. and Student Non-Violent Co-Ordinating Committee makes response to Plaintiff's Motion.

I.

The judgment and order of the Court dated and entered February 17, 1966, dismissing this Civil Action for lack of diversity of jurisdiction, is correct as a matter of law. Accordingly, in the five separate motions and the five separate grounds alledged in support thereof should be over ruled and denied.

WHEREFORE, defendants pray that Plaintiff's motion be over ruled and denied and that they have their cost.

Howard Moore, Jr.
Attorney at Law
859 1/2 Hunter Street, N.W.
Atlanta, Georgia

S/ Eddie H. Tucker
Eddie H. Tucker

...oOo...

MOTION TO RESTRAIN THE PROSECUTION OF SUIT

(Number and Title Omitted) (Filed Mar 13, 1967)

Comes now the plaintiff in the above cause and moves the court to enter an order enjoining, restraining or staying the further prosecution of Civil Action No. 3018 (s) (c), pending in this court, styled Arlena L. Smith, et al., versus Grover Cleveland Harrison, et al. In the alternative, the plaintiff moves that the court continue said Civil Action No. 3018 (s)(c) from its present setting on, to-wit, March 22, 1967. In support of each of the foregoing motions, separately and severally, plaintiff refers the court to its allegations contained in its bill of complaint herein, which bill of complaint is herewith incorporated by reference and made a part hereof. For further separate and additional grounds, plaintiff avers that if it should be determined in this present action that the plaintiff does have coverage under its said policy, which it denies, it would have the right under the provisions thereof to maintain a defense of certain of said defendants as to Civil Action No. 3018 (s) (c), and that if said action is allowed to proceed to judgment prior to the determination of coverage herein sought, then plaintiff will have been irreparably damaged and injured

in that it will not have been afforded the opportunity of defending said suit, of attempting to settle the same or of taking any other appropriate action.

As further additional and separate grounds in support of each of said motions, separately, plaintiff shows unto the court that some or all of the parties hereto previously indicated their desire to have this declaratory judgment action determined prior to the trial of Civil Action No. 3018 (s) (c); that the insurance coverage question will ultimately have to be determined and that it would be to the advantage of all parties for such question to be decided prior to the trial of Civil Action No. 3018 (s)(c).

Plaintiff prays for such other, further, different and general relief to which it may be entitled, the premises considered.

S/ George E. Morse, by Paul B.
George E. Morse,
Attorney for Plaintiff,
Hatten Building,
Gulfport, Mississippi

S/ Paul W. Brock,
Attorney for Plaintiff,
First National Bank Building,
Mobile, Alabama.

Of Counsel, respectively:

MORSE & MORSE
HAND, ARENDALL, BEDSOLE, GREAVES & JOHNSTON

...oOo...

ORDER OVERRULING MOTION
TO VACATE JUDGMENT OF FEBRUARY 17, 1966

(Number and Title Omitted) (Filed May 3, 1967)

THIS CAUSE being heard on plaintiff's motion to vacate the order of dismissal herein dated February 17, 1966; it appearing to the Court that unnecessary confusion has attended the noticing of this motion, attendance at hearings and orderly presentation thereof and the Court being of the opinion that there is not complete diversity of citizenship between the Alabama plaintiff and the voluntary associations who have members in Alabama, and that jurisdiction here is extremely doubtful, although no doubt exists as to jurisdiction by statute of the automobile accident case involved; and the plaintiff having no vested right to maintain a suit of this nature here and the Court being of the opinion that fairness to all parties in interest indicates the necessity for a trial of the projected issues in a regular suit wherein no possible prejudice may intervene or cast its influence;

IT IS, THEREFORE, ORDERED AND ADJUDGED by the Court that plaintiff's motion to vacate said former order of this Court is without merit and is denied.

ORDERED, this May 2, A. D., 1967.

S/ Harold Cox
UNITED STATES DISTRICT JUDGE

...oOo...

VARIOUS MOTIONS OF PLAINTIFF

(Number and Title Omitted) (Filed May 25, 1967)

Comes now American Liberty Insurance Company, Plaintiff in the above styled cause, and shows unto the court as follows:

I

That on February 17, 1966, a judgment was entered by this court decreeing that the court had no jurisdiction of this cause because of improper venue and dismissing the same (a copy of said judgment and the supporting memorandum are attached hereto and marked respectively as Exhibits "A"and "B"); and

II

On February 23, 1966, plaintiff filed motions to reconsider, praying, inter alia that the aforesaid judgment be set aside and that plaintiff be permitted to amend its complaint by striking any defendant as to which venue was improper and which defendant had not previously waived its right to object to venue (a copy of said motions is attached hereto and marked Exhibit "C"); and

III

A hearing on the question of venue was subsequently held before this court on, to-wit, March 6th, 1967, and briefs were filed by the respective parties hereto on the legal questions presented; and

IV

Subsequent to such hearing and on, to-wit, May 2, 1967, this court entered an order (filed May 3, 1966) overruling plaintiff's motion of February 17, 1966, and stating in part that there is not complete diversity of citizenship between this plaintiff and "the voluntary associations who have members in Alabama," without granting plaintiff leave to amend its complaint or to be heard on the question of diversity (a copy of said order is attached hereto and marked Exhibit "D").

WHEREFORE, American Liberty Insurance Company moves the court to relieve it from the aforesaid judgments by amending same to grant plaintiff leave to file a complaint amended as follows:

(1). By dismissing as parties defendant the Congress of Racial Equality, Council of Federated Organizations, and any defendant as to which venue would be improper and which said defendant has not waived its right to object to venue; and

(2) By dismissing Student Non-Violent Coordinating Committee as a party defendant and any other voluntary association which has shown that it has members resident in the State of Alabama; and

(3) By joining as parties defendant, X,Y and Z, being residents of the State of Mississippi, members of Student

...ooo...

Non-Violent Coordinating Committee, and representative parties on its behalf, and as grounds for such amendment plaintiff shows as follows:

(a) The membership of Student Non-Violent Coordinating Committee is so numerous that joinder of all its members is impractical;

(b) There are questions of law or fact common to the class;

(c) The claims or defenses of the represantative parties are typical of the claims or defenses of the class; and

(d) The representative parties will fairly and adequately protect the interests of the class.

(4) Plaintiff further moves the court to relieve it from the aforesaid judgments of, to-wit, February 17, 1966, and of, to-wit, May 2, 1967, by withdrawing those portions of the same insonsistent herewith, and by ordering this cause set for trial as soon as possible. Plaintiff asks the court to make such other order in the premises as the court shall deem just.

Hand, Arendall, Bedsole, Greaves
and Johnston
Mobile, Alabama

MORSE AND MORSE
Hatten Bldg., Gulfport, Mississippi
Attorneys for Plaintiff

BY: S/ George E. Morse

...oOo...

NOTE: Judgment - Heretofore copied on page 108, Opinion of Court - Heretofore copied on page 107, Various Motions of Plaintiff - Heretofore copied on page 108, Order Overruling Motion to Vacate Judgment of February 17, 1966 - Heretofore copied on page 125.

...oOo...

NOTICE OF APPEAL

(Number and Title Omitted) (Filed Jun 1, 1967)

Notice is hereby given that American Liberty Insurance Company, plaintiff in the above cause, hereby appeals to the United States Court of Appeals for the Fifth Circuit from the final judgment entered in this cause on, to-wit, February 17, 1966, and from the order of the Court overruling the motions of the plaintiff to vacate and set aside the aforesaid judgment, entered herein on, to-wit, May 3, 1967.

Dated this 1st day of June, 1967.

MORSE AND MORSE
Hatten Building
Gulfport, Mississippi

BY: S/ Illigible
Attorneys for Plaintiff

HAND, ARENDALL, BEDSOLE, GREAVES and JOHNSTON
First National Bank Building
Mobile, Alabama

BY: S/ Paul W. Brock

...oOo...

NOTE: Bond on Costs on Appeal - Omitted - Filed in its Original Form.

...oOo...

[illegible] PHA J. et al vs CONCORDIA [illegible] (LA.) [illegible]
(SCHOOL DESEGREGATION CASE)

IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF LOUISIANA

MONROE DIVISION

IRMA F. GRIFFIN, by her father and next friend THOMAS GRIFFIN,
DOROTHY GARNER, by her mother and next friend SHANNA GARNER,
TIMMIE MAE CHANEY, by her mother and next friend EARLIE MAE CHANEY,
and all Negro citizens similarly situated,

PLAINTIFFS

vs.

CONCORDIA PARISH SCHOOL BOARD,
W. R. MARTIN, President, and
J. O. LANGLOIS, Superintendent,
Vidalia, Louisiana,

DEFENDANTS

CIVIL ACTION No.
DIVISION " "

. . . . . .

COMPLAINT

I. The jurisdiction of this Court is invoked under Title 28, United States Code, Section 1343 (3). This is a suit in equity authorized by law, Title 42, United States Code, Section 1983, to be commenced by citizens of the United States or other persons within the jurisdiction thereof for the protection of deprivation, under color of state statute, ordinance, [illegible], custom or usage of rights, privileges and immunities [illegible] by the equal protection clause of the fourteenth Amendment to the Constitution of the United States.

II. This is a proceeding for a preliminary and permanent injunction enjoining the School Board of Concordia Parish, Louisiana, its officers, members, agents, representatives, employees and their successors necessary, including the Superintendent of Schools of said Concordia Parish, from continuing the policy, practice, custom and usage of maintaining and operating a compulsory biracial school system in said parish, and of assigning students, teachers and other school personnel to the schools

operated by them on the basis of race.

III. Plaintiffs bring this action as a class suit pursuant to Rule 23 (a) (3) of the Federal Rules of Civil Procedure on behalf of themselves and on behalf of other Negro children and their parents similarly situated in said Concordia Parish, all of whom are affected by policy, practice, custom and usage complained of herein. The members of the class on behalf of which plaintiffs sue are so numerous as to make it impracticable to bring them individually before this court. This suit involves common questions of law and fact and common grievances arising out of common wrongs, and common relief is sought for each of the class. Plaintiffs fairly and adequately represent the interests of the class.

IV. Infant and adult plaintiffs are Negro citizens of the United States and of the State of Louisiana, have been and are presently residing in Ferriday, Washington Parish, Louisiana. The minor plaintiffs allege that they, and each of them, have been in the immediate past school terms, and upon commencement of the school semester next following are registered to attend, and as in the past are scheduled to be attending the public free schools of said Concordia Parish. The schools which minor plaintiffs have been attending and will continue to attend, have been and are limited by defendants to attendance by Negro children pursuant to the policy, practices, custom and usage of defendants, and of their predecessors. Unless defendants are enjoined by this Court, from operating a compulsory biracial school system and assigning school children therein and other personnel on the basis of race, these practices will continue. The minor plaintiffs bring this action by their parents, as next friends, pursuant to Rule 17(c) of the Federal Rules of Civil Procedure.

V. Defendant is the Concordia Parish School Board, with mailing address of P. O. Box 548, Vidalia, Concordia Parish, Louisiana. It is a corporation, organized and existing under the laws of the State of Louisiana. Defendant W. D. Wachter is the

president of said school board and defendant J. O. Lancaster is the superintendant. The said Board is charged by the law of the State of Louisiana with the duty of operating systems of free public schools in the aforesaid Concordia Parish accordingly. The said school board is sued in its corporate capacity; the said president and superintendant are sued in their official and individual capacities.

VI. Defendants, acting under color of the laws of Louisiana, have pursued for some time and are presently pursuing a policy, practice, custom and usage of operating the public school systems in said Concordia Parish on a racially segregated basis. Defendants maintain and operate compulsory biracial school systems by the use of dual school zones or attendance areas; defendants make initial assignments of students to the public schools under their control on the basis of race and color. Principals, teachers and other professional personnel under defendants' jurisdiction are likewise assigned to the schools on the basis of race and color. Students initially assigned to elementary schools designated as "white" are thereafter assigned solely to high schools similarly designated; students assigned initially to elementary schools designated as "Negro" are thereafter assigned solely to high schools similarly designated. In no case are the assignments of either students, teachers, principals or other professional personnel of the Negro race made to schools other than those designated as Negro. Defendants also discriminate against plaintiffs herein and the members of the class represented by them, in school construction, the formulation of budgets, and the disbursement of school funds. Specifically, defendants construct and maintain elementary and high schools with reference to the maintenance of compulsory biracial school system. Defendants herein also limit participation in extracurricular activities in the schools to one or the other race, separately.

VII. Plaintiffs and the members of the class which they represent are irreparably injured by the acts of defendants complained of herein. The continued operation by defendants of compulsory biracial school systems in said Concordia Parish, including the assignment of pupils, teachers, principals, other professional personnel as well as administrative personnel on the basis of race; the maintenance of dual zone lines or attendance areas based on race; the operation of the budgets for the schools on the basis of race; the construction of schools on the basis of race, and the programming, planning and carrying out of extracurricular activities on the basis of race -- each and all violate the rights of the plaintiffs and the members of their class, which rights are secured to them by the equal protection clause of the fourteenth amendment to the constitution of the United States. This irreparable injury to plaintiffs and their class will continue unless and until defendants are enjoined by this Court. Any other relief to which plaintiffs and those similarly situated might be remitted would be attended by uncertainty and delay, would involve a multiplicity of suits, cause further irreparable injury and occasion vexation and inconvenience and would deny to plaintiff and those similarly situated substantial relief.

VIII. In prior school desegregation suits in the State of Louisiana, all state laws requiring compulsory racial school desegregation were declared unconstitutional, null, and void. In addition, the unconstitutionality of compulsory racial segregation as a general principle was judicially established over eleven (11) years ago in Brown v. Board of Education, 74 S.Ct. 686, 347 U.S. 483, 98 L.Ed. 873 (1954). Notwithstanding, the Concordia Parish School Board has not undertaken any steps to desegregate their school systems and, on the contrary, continue to foster and maintain a biracial school system as stated hereinabove, thereby imposing upon plaintiffs the costly necessity of this suit. Accordingly, plaintiff should be allowed to recover costs and reasonable attorneys fees against defendants.

WHEREFORE, plaintiffs respectfully pray that this Court issue a temporary restraining order enjoining racial segregation in the Concordia Parish Schools, or if the Court does not issue said order,

advance this cause on the docket and order a speedy hearing of this action according to law and after such hearing enter a decree requiring the complete desegregation of four grades by January 1, 1966.

Plaintiffs recognize that this Honorable Court has issued virtually identical plans in Johnson v. Jackson Parish School Board Civil Action No. 11,130, Banks v. Claiborne Parish School Board, Civil Action No. 11,304, and in Andrews v. City of Monroe School Board, Civil Action No. 11,297.

Plaintiffs further recognize that these approximate standard plans proposed by Louisiana school boards and ordered by Federal District Court in Louisiana.

Since, plaintiffs have major objections to these plans, they urge the following alternatives to the court.

(1) A plan which all first grade children attend a particular school in the parish, all second grade children attend another school, all third grade, etc. through twelve grades.

(2) An alphabetical system which will be administered so as to effectuate desegregation of schools. For example, all children whose last name begins with "A" in the first grade shall go to a certain school, "B" to another school, etc.,

(3) A plan wherein:

(a) Every parent in the parish be immediately given an application form setting forth the desire of the parent as to the school he or she wishes his child to attend.

(b) The School Board, upon receipt of these applications shall file them in numerical order, and shall fulfill them in the same numerical order.

(c) The applications shall provide alternative choices which shall be set forth by the parent in such order as the parents request; providing there is space in said building for said child under the numerical system provided above, the first choice will be accepted; if such choice is filled, then the second or third choice shall be granted.

Plaintiffs pray that such plans provide for the assignment of pupils, teachers, principals, other professional school personnel, as well as administrative personnel on a nonracial basis, the elimination of school zones or attendance area lines drawn on a racial basis; the allotment of funds, the construction and maintenance of schools and facilities, the preparation and approval of budgets, on a nonracial basis; and for the elimination of any other discrimination in the planning or operation of the school systems or curricula under their respective jurisdiction which are based on race or color.

Plaintiffs respectfully suggest that if the court does not accept plaintiffs' suggestions that it order desegregation in accordance with the standard plans it issued in Jackson and Claiborne Parishes, and in the City of Monroe. Plaintiffs urge the Court to enter this order without, asking the School Board to submit a desegregation plan. To require this step would cause unnecessary delays in desegregation that would irreparably harm plaintiffs' rights to an equal education this year. To require this step is an unnecessary act, since the State will undoubtedly submit the standard plan already approved by this court.

Plaintiffs assert that they have serious objections to the standard plan, reserve their rights to rectify it, and urge it on the court only because time is of the essence.

In the alternative plaintiffs pray that this court enter a temporary injunction and preliminary and permanent injunction enjoining defendants, their officers, agents, representatives, employees, successors, and all persons in active concert and participation with each, all or any of them from:

1. Continuing to operate compulsory biracial schools systems in Concordia Parish, Louisiana;

2. Continuing to maintain dual schemes or patterns of school zone lines or attendance area lines based on race or color;

3. Making initial or subsequent assignments of pupils to the public schools of Concordia Parish, Louisiana, on the basis of race or color;

4. Assigning teachers, principals, other professional personnel as well as administrative personnel to the public schools on the basis of race or color;

5. Approving employment contracts, budgets and disbursing funds on the basis of race or color;

6. Constructing elementary, junior high, high schools or any other school facility in Concordia Parish, Louisiana, on the basis of dual attendance of areas based on race or color;

7. Programming, planning, supporting or carrying out extra-curricular activities which are limited solely to one or the other of the races;

8. Continuing to make any other distinction in the planning or operation of the schools under their respective jurisdictions which are based on race or color.

9. Plaintiffs pray that this injunction be made fully effective as of January 1, 1966.

Plaintiffs further pray that this Court retain jurisdiction of this case pending complete desegregation of the Concordia Parish School System.

Plaintiffs pray that this Court grant such other further additional or alternative relief as may appear to the Court, from time to time, to be just, equitable and proper, and they will ever pray.

Respectfully submitted,

ROBERT F. COLLINS

NILS R. DOUGLAS

LOLIS E. ELIE

ATTORNEYS FOR PLAINTIFFS

2211 DRYADES STREET

NEW ORLEANS, LOUISIANA

BY: _____

OF COUNSEL:

CARL RACHLIN, ESQ.
38 PARK ROW
NEW YORK, NEW YORK

ALVIN J. BRONSTEIN, ESQ.
603 N. FARISH STREET
JACKSON, MISSISSIPPI

HARRIS DAVID
932 ROYAL STREET, APT. G
NEW ORLEANS, LOUISIANA

ATTORNEY'S VERIFICATION

I, ROBERT F. COLLINS, hereby state that I am an attorney qualified to practice law in Louisiana, in the United States District Court for the Eastern District of Louisiana,

That I have read the complaint and know the contents thereof,

That I affirm upon information and belief that the contents are true,

That I verify this complaint because it deals with questions of fact and/or law of which I, as an attorney, have more knowledge than the plaintiffs.

ROBERT F. COLLINS

SWORN TO AND SUBSCRIBED
BEFORE ME THIS 26TH DAY
OF NOVEMBER, 1965.

NOTARY PUBLIC

IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF LOUISIANA

MONROE DIVISION

IRMA J. SMITH, et al.

Plaintiffs

vs. CIVIL ACTION NO.

CONCORDIA PARISH SCHOOL BOARD, et al. DIVISION " "

Defendants

* *

O R D E R

Petitioners hereinabove (being the plaintiffs in the above captioned matter) having filed suit seeking injunction to enjoin defendants (the respondents herein) from operating a biracial school system in the Concordia Parish school district;

IT IS HEREBY ORDERED that said respondents show cause, if any, on November , 1965 at o'clock .M. before this Court at Monroe, Louisiana, why the injunction prayed for by petitioners should not issue forthwith and, further, why this Court should not promptly order desegregation in accordance with law, to be fully implemented at the commencement of the coming semester or January 1, 1966, which ever is sooner.

IT IS FURTHER ORDERED that notice of this Order to Show Cause be given to respondents by service made on or before November , 1965, such service to be made in accordance with Rule 5(b) of the Federal Rules of Civil Procedure.

Entered this day of November, 1965, at Monroe, Louisiana.

UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF LOUISIANA

MONROE DIVISION

IRMA J. SMITH, et al.

Plaintiffs

vs. CIVIL ACTION NO.

CONCORDIA PARISH SCHOOL BOARD, DIVISION " "

Defendants

* *

TEMPORARY RESTRAINING ORDER

Upon consideration of the annexed petition and upon motion of counsel for petitioner-plaintiffs in the above captioned matter, and the Court being satisfied with the facts and allegations set forth in the said annexed petition, and further it appearing that immediate and irreparable injury, loss and damage will result to petitioner-plaintiffs by reason of defendants' continuing conduct of operating segregated, biracial schools in violation of long established law;

IT IS HEREBY ORDERED that defendants, Concordia Parish School Board; W. D. Wachter, President of the School Board; and J. O. Lancaster, Superintendent of Schools - be and are forthwith restrained, enjoined and prohibited from continuing to maintain, plan or operate, or in any manner continuing a segregated, biracial school system or such school or schools under their jurisdiction. This order shall apply to any successors, temporary or permanent replacements or any other substitutes of the individual defendants named as well as of the offices which each respectively occupies.

This temporary restraining order shall issue without bond and shall expire at the end of ten (10) days from the date hereof

unless extended by this Court prior to its expiration for good cause shown and the reasons therefore entered of record herein.

IT IS FURTHER ORDERED that notice of this temporary restraining order be given to defendants by service in accordance with Federal Rules of Civil Procedure, Rule 5(b).

Entered this day of November, 1965 at Monroe, Louisiana.

JUDGE, UNITED STATES DISTRICT COURT

[1965, December]

UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF LOUISIANA

MONROE DIVISION

****

IRMA J. SMITH, by his father and next friend VERNON SMITH, DOROTHY CASTON, by her mother and next friend GENEVA CASTON, PINKEY MAE CARTER, by her mother and next friend ESSIE MAE CARTER, and all Negro citizens similarly situated,	:	
Plaintiffs	:	CIVIL ACTION
VS.	:	NO. 11,577
CONCORDIA PARISH SCHOOL BOARD, W. D. WACTOR, President, and J. O. LANCASTER, Superintendent, Vidalia, Louisiana,	:	
Defendants	:	

ANSWER

Now into Court, through undersigned counsel, come CONCORDIA PARISH SCHOOL BOARD, W. D. WACTOR, President of Concordia Parish School Board; and J. O. LANCASTER, Superintendent of Schools of Concordia Parish, made defendants herein, with respect, aver that:

I

Paragraph I of plaintiff's complaint is denied.

II

Paragraph II of plaintiff's complaint is denied.

III

Paragraph III of plaintiff's complaint is denied.

IV

Paragraph IV of plaintiff's complaint is denied.

V

Paragraph V of plaintiff's complaint is denied.

VI

Paragraph VI of plaintiffs' complaint is denied.

VII

Paragraph VII of plaintiffs' complaint is denied.

VIII

Paragraph VIII of plaintiffs' complaint is denied.

IX

Further answering plaintiffs' complaint, defendants now show that they are ready and willing to comply with any reasonable orders of this Court, after full hearing had and all circumstances and benefits of such law have been applied.

X

Further answering plaintiffs' complaint, defendants whow that the allegations of the complaint if allowed to stand will cause irreparable and immediate damage and injury to the plaintiffs themselves and all other persons in the Concordia Parish School System, as will appear on the trial hereof.

WHEREFORE, defendants pray that after due proceedings had and hearing held in this entire matter before this Honorable Court that the proper order be entered after all circumstances and conditions are shown in the hearing to the satisfaction of this Honorable Court; and further pray for all general and equitable relief in the premises.

/s/ Roy S. Halcomb

Roy S. Halcomb, Assistant
District Attorney, Seventh
Judicial District, and Counsel
for Defendants
Box 14
Ferriday, Louisiana

C E R T I F I C A T E

THIS WILL CERTIFY that on this date a copy of this Answer was placed in the United States Mail addressed to the following attorneys of record for the plaintiffs, to-wit:

Collins, Douglas & Elie
Attorneys at Law
2211 Dryades Street
New Orleans, Louisiana

Carl Rachlin
Attorney at Law
38 Park Row
New York, New York

Alvin J. Bronstein
Attorney at Law
603 N. Parish Street
Jackson, Mississippi

Harris David
Attorney at Law
932 Royal Street, Apt. G
New Orleans, Louisiana

Ferriday, Louisiana, this 10th day of December, 1965.

/s/ Roy S. Halcomb
Roy S. Halcomb
Assistant District Attorney and
Counsel for Defendants
Box 14
Ferriday, Louisiana

9

new file

December 7, 1965

Collins, Douglas & Elie, Esqs.
2211 Dryades Street
New Orleans, Louisiana

Dear Bob, Nils & Lolis:

Congratulations on your bringing suit in Concordia Parish to desegregate the schools. Could we have a copy of the complaint?

With best regards,

Sincerely,

CARL RACHLIN
General Counsel

CR/cs

File in Southern Schools
Louisiana

UNITED STATES DISTRICT COURT

OFFICE OF THE CLERK

WESTERN DISTRICT OF LOUISIANA

P. O. BOX 106
SHREVEPORT, LA. 71102

March 31st, 1967

Mr. Robert F. Collins,
Attorney at Law,
2211 Dryades Street,
New Orleans, Louisiana.

Mr. Carl Rachlin,
Attorney at Law,
38 Park Row,
New York, New York.

Mr. A. J. Bronstein,
Attorney at Law,
603 N. Farish Street,
Jackson, Mississippi.

Mr. Harris David,
Attorney at Law,
932 Royal Street, Apt.G,
New Orleans, Louisiana.

Mr. Richard B. Sobol,
Attorney at Law,
2211 Dryades Street,
New Orleans, Louisiana.

Mr. Roy S. Halcomb,
Asst. Dist. Attorney,
P. O. Box 14,
Ferriday, Louisiana.

Mr. W. C. Falkenheiner,
Attorney at Law,
P. O. Box 308,
Vidalia, Louisiana.

Mr. Nicholas deB.Katzenbach,
U. S. Dept. of Justice,
Washington, D. C.

Mr. Edward L. Shaheen,
U. S. Attorney,
P. O. Box 33,
Shreveport, Louisiana.

IN RE: CIVIL ACTION NO. 11,577-M
IRMA J. SMITH, etc., et al VS. CONCORDIA PARISH SCHOOL BOARD, ET AL

Gentlemen:

Please be advised the Honorable Ben C. Dawkins, Jr., has fixed the above captioned case for hearing on Motions by Plaintiffs for further relief at 1:00 P.M., APRIL 5, 1967 in MONROE, LOUISIANA.

Very truly yours,

ALTON L. CURTIS, CLERK

BY: Mary Anne Rainey
Deputy Clerk

mar

(1)

(3) The Consent Standard is Subjective, and thus takes into account the Sophistication, Knowledge, and Experience of the Victim

As in Canida where the "disparity of position" of the "humble defendant" was one factor which led to the denial of the claim of consent, courts examine closely the victims capacity to waive his rights. This the standard of consent is subjective, Courts do not ask if objectively the police request was made in such a manner that a "reasonable man" could understand and consent; the question is instead if this defendant, considering his knowledge, his experience, his position did consent.

In HONIG v. U.S. 208 F2d 916, cited by the Court of Appeals for the proposition that consent can validate illegal searches, the court found consent to the search, but justified this finding on the basis that the defendant had much experience and knowledge of law, and a background of previous arrests. In Wai Lau v. U.S. 215 F. Supp. 684, 686 the court found no consent by a defendant who didn't "speak or understand the English language with any facility," citing as one reason that the burden of proving consent is of course heavier where it appears that the owner is illiterate or a foreigner who does not readily speak or understand the English language.

TAKAHASHI furnishes another example of the courts taking into account the fears and knowledge of the victim, his state of mind in determining if his acquiescence was

(1)

effective consent. It may be that punishment wouldn't have been an automatic consequence of refusal to give up records, yet the court realized that the defendant, a Japanese-American in 1942 confronted by U.S. authorities felt he had no choice.

Similarly, in this case the court must ask if the welfare recipient, dependent on the welfare worker for the necessities of life, uneducated, with no knowledge of her rights, believing that continued benefits depended on cooperation with the welfare worker, could recognize much less intelligently choose any other option but opening the door. The welfare recipient didn't even know she had a choice, but even if she had known, still she was in no position to freely and voluntarily decide.

if the recipient, uneducated or glamour to authority

Similarly in this case the issue is not whether the welfare worker's receitals would have been adequate to gain consent from the reasonable man, but whether a free, voluntary consent without actual or implied coercion would be gained from a welfare recipient. The question is if the welfare recipient, a person dependant on the welfare worker for the necessities of life, uneducated, often with little facility in English language, believing that continued benefits depended on cooperation with the welfare worker could freely and voluntarily without submission to authority or coercion choose any other course but opening the door,

(4) No consent occurs where submission to authority had <u>any</u> place

Courts have been extremely sensitive to the relationship between the parties, and when the entry is obtained by the force of authority, then no consent was obtained. In JOHNSON where the police officer identified himself as "Lieutenant Belland" and said, "I want to talk to you a little bit," the court found that entry "demanded under color of office." The entry was granted in submission to authority rather than as an understanding and intentional waiver of a constitutional right. In Canida v. U.S. 250 F 2nd 822, 825 the court makes very clear that entries in submission to authority won't result in loss of constitutional rights:

"Consent" in the obtaining of which the assertion of force and pressure or of superior authority had <u>any</u> place is violative of the Constitutional protection. Especially is this the case in situations of this kind, involving such a disparity of position as that of the government agent and this humble defendant."

Consent is not

As in Canida

Certainly the disparity of position here is as great as in Canida

The had superior power, rank, level — but is not

authority or level 10. It

The parity of position is not as

The Canida defendant was a woman, "timid and unadvised of her rights." The searcher was a federal agent whose apparent duty was investigating interstate transport of stolen property. But the disparity of position in Canida appears quite small when compared to the disparity in this case. The disadvantaged party here is absolutely destitute, uneducated, helpless; whatever index of capability chosen, whether it be financial, educational, social, political, the welfare recipient occupies rock bottom. Further the searcher here is the very person who controls the necessities of life, who has the power to break up her family, who acts as friend and advisor. It is

to imagine a relationship in which the disparity of position is greater. Indeed the concept of consent is not fitting. The parties are situated such that entry is a mere reflex submission. Where superior authority had "any place" in the consent, it violates Constitutional protection. Certainly in the consent of recipient to welfare under superior authority has at least some, if not a predominant, place; and thus the consent is ineffective.

Stewart
Murphy, Esq.

Courts are suspicious of claims by authorities that the victim has consented to conduct which without the alleged consent would be a violation of his constitutional rights. This reluctance to find consent validating an otherwise unconstitutional search has resulted in a large body of case law in which courts have struggled to find standards to test the claim

of consent. This section is devoted to isolating the standards with which claims of consent are tested, and then applying these standards to this case to determine if constitutionally valid consents were obtainable.

1. Consent must be voluntary, freely and intelligently given, without coercion, actual or implied.

In CHANNEL v. U.S. 285 F2d 217, 219, "A search and seizure may be made without a search warrant if the individual freely and intelligently gives his unequivocal and specific consent to the search uncontaminated by any duress or coercion, actual or implied."

"In order for consent to constitute a waiver, the burden is on the government to show by clear and convincing evidence that such consent was unequivocal and specific, and freely and intelligently given." U.S. v. Wai Lau, 215 F. Supp. 684, 686.

The rigid standards of voluntariness are illustrated in the Supreme Court decision in AMOS v. U.S., 215 U.S. 313. Although the women victim had opened the door of her home silently and without protest the revenue officers announcement that they had come to search operated as "implied coercion."

~~III. Coercion~~

~~In~~ This case doesn't ~~[illegible]~~ require subtle analysis to find coercion. The coercive nature of the entry is ~~[illegible]~~ readily evident from (1) the testimony of welfare workers, (2) the dominant status of the welfare worker, (3) the content of the allegedly "uncoercive" request. ~~The Reichart~~

(A). The Reichart Report stated, "Almost every investigator who has participated in such searches readily admits that most women allow them to enter only because they fear that if entry is denied, public assistance will be cut off." ~~[illegible]~~ Benny Parrish testified that "recipients know that if they refuse to admit a worker, they probably will be discontinued, that recipients have been discontinued for this refusal." (R.I. 351:15-17.) It is no mystery to those who actually search why they are permitted to enter.

(B). The recipient has been bombarded with the threat that she must cooperate with the welfare worker, submit to visits, or lose welfare benefits. The recipient has never been told that this visit was an exception, that she could refuse entry without penalty (if that were true). To the welfare recipient the only reasonable assumption is that non-cooperation with this visit too carries the penalty of loss of benefits. To an absolutely destitute person without other means of staying alive the threat of loss of welfare is a powerful weapon. Indeed in

Lynuum v. Illinois, 372 U.S. 528 a conviction was reversed on the grounds that a threat to cut off aid to dependant children benefits coerced the confession. The threat that coerced a confession in Lynuum must be seen to coerce permission to enter in Panish.

But even if the recipient had been informed that refusal carried no immediate penalty, still the recipient must feel great pressure to admit the welfare

worker. The resident who refuses entry to a police officer is turning away a person who will probably not be seen again and who has no continuing power over her life. Refusing entry to the welfare worker is a different matter; this person still has control over the necessities of her life. Even if he can't immediately retaliate, his good will is still all important. His control of eligibility, the amount of the disbursement, the disposition of additional sums, his power to initiate action to break up the family, the importance of his testimony in any of the numerous, frightening and

mysterious legal proceedings, and her need for his help still remain. To friendless, destitute people refusal of entry to a person with such powers is unthinkable. The recipient has little freedom to turn away a person with such powers. The request at 6:30 a.m. by her welfare worker must have an imperative and coercive sound to the recipient, even if she were told that there was no immediate penalty for non-cooperation.

But of course she wasn't told (nor could she be, for it is apparently not True), welfare recipients had been repeatedly told that non-cooperation meant loss of benefits; many undoubtedly knew that, as stated by the District Court of Appeals on p. —, "in the past the department had withheld benefits from recipients who refused entry to members of the fraud unit." But recipients had never been told that they could refuse entry, what else could they possibly think but that non-cooperation with the 6:30 raids meant loss of benefits.

It was perfectly reasonable and unavoidable that recipients thought that refusal to permit entry would lead to termination of welfare benefits as well as jeopardy of the welfare worker's all important

good will. It is no wonder that almost every investigator who participated in the raids believed that entry was allowed because of fear that benefits would be cut-off.

(c). If the recipients were afraid that refusal could mean a loss of benefits, then they would not have been reassured by questioning the workers about the consequences of refusal. As documented in the decision of the District Court of Appeals on p. —, the "workers were instructed that if admission was not granted, benefits would not automatically be discontinued but the reason for denying admission would subsequently

be investigated. There is no question what subsequent investigation would mean to the welfare recipient; this subsequent investigation wouldn't be undertaken with a view to increase welfare benefits. Special investigation could only result in a loss or decrease in subsistence money. No welfare recipient would miss the threat inherent in a subsequent investigation. It was a fist that knocked on each recipients door. As stated by the U.S. Supreme Court in HALEY v. OHIO 332 U.S. 596, 601, "we cannot give any weight to receitals which merely formalize constitutional requirements. Formulas of respect for constitutional safeguards cannot prevail

over the facts of life which contradict them. They may not become a cloak for inquisitorial practices and make an empty form of the due process of law for which free men fought and died to obtain."

The facts of life in this case are clear; welfare recipients open their doors in response to the threat of loss of life sustaining welfare benefits. Consent must be voluntary, freely and intelligently given, without coercion actual or implied. No constitutionally valid consent could have occurred.

(2) Consent implies choice, an alternative to consenting. By definition, consent can only characterize a situation where refusal is an open possibility. If the victim has no choice, he can not be said to have consented. In NELSON v. U.S. 208 F2nd 505, the court found that a hardened gambler had yielded his notebook under compulsion of a Congressional committee. The court emphacized that consent did not occur, for Nelson had no choice — he would be prosecuted for contempt if he refused and for gambling if he agreed. In TAKAHASHI in finding that the defendant did not waive his Fourth Amendment rights the court noted that in 1942 Japanese "could, with ill grace, refuse the U.S. any evidence in their possession." Reluctance upon their part would probably be interpreted as evidence of treason or at least trading with the enemy." The court recognized that the suspect had no choice. Regardless of how quickly and seemingly voluntarily he complied with the police request, his status as a Japanese during World War II put him at such a great disadvantage that even the most courteous request by police officers was coercive. The request contained an inherent threat. The court recognize that this Japanese-American who had conducted a successful business and was presumably capable and sophisticated was a member of a class who

(OVER)

(51)

had no choice but to consent to the suggestions of authorities.

(5)

[illegible]

The welfare recipient is also faced with this absence of choice. He sees no option - he can either permit entry or lose welfare benefits. Borrowing the words of the court in TAKAHASHI, the welfare recipient could, with ill grace, refuse his welfare worker permission to enter. Reluctance upon his part would probably be interpreted as evidence of a crime. It might have been that TAKAHASHI would not have been punished for refusal to give up his papers. But the court recognized that this was the expectation of the defendant. The request was

made in circumstances that ~~[illegible]~~ ~~[illegible]~~ foreclosed all choice. Similarly here the welfare recipient felt he had no choice; he must comply or lose welfare benefits. ~~[illegible]~~ ~~[illegible]~~ Consent can have no meaning nor constitutional validity when granted in ~~[illegible]~~ ~~[illegible]~~ the absence of choice.

approximate equality. But even if these bare essentials, the explanation and request, are sufficient when the parties are approximately equals, surely when as here the party giving up a right is totally dependent on the party requesting the waiver for the necessities of life, when the requesting party is chief advisor and has established a relation of respect and trust, when the party asked to permit entry knows she must cooperate with the party requesting entry lose her family's subsistence or then this court must demand higher standards of conduct before the

disadvantaged party can meaningfully consent to waiver of rights. We can at least demand that the disadvantaged party has full knowledge of the right to refuse entry. When the relationship of the parties is replete with influence, domenance, trust, and confidence courts demand, and should demand here, that the subservient party act with full knowledge of his rights.

If the integrity of the law is to be preserved, if we want to have a society where the strong are just and the weak protected, then we can't

indulge in the fiction that the welfare worker and the recipient are in a position of equality and that transactions between them require no more safeguarding than transactions between equals. If in a totalitarian country the state sent an agent to homes at 6:30 in the morning searching for economic crimes against the state, if the people whose homes were searched were absolutely dependent on state granted welfare, if the agent who searched was the very man who controlled and could terminate the subsistence grant, if the

necessities of life of the person searched depended on the nearly unpolicied and unsupervised good will of the investigator, would we be satisfied with the commissar's explanation that no human rights had been violated because the people had freely and voluntarily agreed to the entry, because permission to enter had been requested and of course everybody consented. It is impossible to evade the fact that entry to the recipients homes at 6:30 in the morning is gained through confidence and authority operating on people uneducated, untrained, without knowledge of their

rights, in extreme economic distress, Even if there were no rigid law of waiver of constitutional rights, no rigid standards for determining effective consent, there is ample precedent in the common law and in S. 1575 of the California Civil Code to pronounce the alleged consent gained, the transaction between welfare worker and recipient, utterly void. The agreement between welfare worker and recipient is the product of authority, dominance, trust, weakness of mind, and economic distress, As in GRIMES v. ALLEN 209 P2nd 651, 653 where

a contract between police officer and prisoner was declared voidable, the relationship of the parties compels the conclusion that consent by the recipient was as free and voluntary as "some of the confessions that emanate from behind the Iron Curtain."

SINCE CONSENT CONSTITUTES WAIVER OF FOURTH AMENDMENT RIGHTS, SINCE A WAIVER MUST BE THE INTELLIGENT RELINQUISHMENT OF A KNOWN RIGHT, AND SINCE THE WELFARE RECIPIENTS WERE ONLY NOT WITHOUT KNOWLEDGE OF THEIR RIGHT TO REFUSE ENTRY BUT HAD BEEN INDOCTRINATED AND CONDITIONED TO BELIEVE THEY HAD A DUTY TO PERMIT ENTRY, NO EFFECTIVE CONSENT OCCURRED.

Consent to an illegal search is a waiver of Fourth Amendment rights. It is very clear that Fourth Amendment rights may be waived. But the "courts indulge every reasonable presumption against waiver of fundamental constitutional rights, and we

(OVER)

don't presume acquiesence in the loss of fundamental rights," JOHNSON v. ZERBST 304 U.S. 458, 464. "A waiver is ordinarily an intentional relinquishment or abandonment of a known right or privilege." JOHNSON v. ZERBST, 304 U.S. 458, "Waiver must be intelligent, and the determination depends on the particular facts and circumstances surrounding the case, including the background, experience, and conduct of the accussed." JOHNSON v. ZERBST

In the recent opinion in MIRANDA v. ARIZONA, — U.S. —, — the Supreme Court reaffirmed the principles enunciated in JOHNSON v. ZERBST: "This court has always set

high standards of proof for the waiver of constitutional rights. JOHNSON v. ZERBST, 304 U.S. 458" After iterating the duty to warn the accussed of his right to remain silent, the Supreme Court states: "The defendant may waive effectuation of these rights provided that the waiver is made voluntarily, knowingly, and intelligently." MIRANDA v. ARIZONA _ US. —, —. Furthermore the court [redacted] emphacizes that the waiver must actually be intelligent, for in protecting these rights against unknowing and unintelligent waiver the court notes, "A once stated warning, delivered by those who will conduct the

investigation cannot itself suffice to that end among those who most require knowledge of their rights." MIRANDA v. ARIZONA — U.S. —, —, ~~and therefore the police are required to inform the accused of his right to have, court appointed counsel.~~

The Welfare Department in Alameda County did not see the necessity for even a once stated warning. Never had the recipient been told that she could refuse entry. Yet time after time she had been told she must cooperate with the welfare worker and many

times she has admitted him to her home.

The person under police interrogation is merely ignorant of his rights.

Start here

The welfare recipient asked to permit entry has a further disadvantage; not only is the welfare recipient ignorant of his rights but he has also been indoctrinated by repeated messages and conditioned by repeated visits that he must permit entry. How could the welfare recipient "intelligently relinquish a known right" when he not only doesn't know of his right, but he has been trained to think that the welfare worker has

right, that he in fact has a duty to

permit entry. It is gross understatement

to say that the standard for

waiver of a constitutional right, the intelligent relinquishment of a known right, has

not been met. Consent to search is

waiver of a constitutional right;

there was no waiver and thus no

constitutionally valid consent.

SMITH, LOUIS S. ET AL VS STATE OF NEW JERSEY, 1965-1966
(LEGAL PAPERS - APPEAL)

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1965

No.

LOUIS S. SMITH, HERBERT E. CALLENDER, MARVA L. AMIS,
LILY R. LEWIS, WILLIARD D. CRITTENDON, JOYCE L. SCHURIK,

Petitioners,

v.

THE STATE OF NEW JERSEY,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE
SUPREME COURT OF THE STATE OF NEW JERSEY

Petitioners pray that a Writ of Certiorari issue to review the mandate on affirmance of the Supreme Court of the State of New Jersey entered in the above entitled action on March 21, 1966.

Citation to Opinions Below

The New Jersey Supreme Court affirmed the convictions of the defendants in an opinion which is reported,

sub nom. State of New Jersey v. Louis S. Smith, at 46 N.J. 510, 118 A.2d 147. The Mercer County Court, from which the appeal to the Supreme Court was taken, convicted Petitioner Callender of violating Chapter 2 A: 170-28 of the New Jersey Statutes and convicted all of the Petitioners of violating Chapter 2 A: 170-29(2)(b) of the New Jersey Statutes, on appeal from convictions of all petitioners on both charges by the Municipal Court of Trenton. The opinion of the Mercer County Court (Hon. J. Wilson Noden, Justice of the County Court), which is not officially reported, is printed as Exhibit A to this Petition. There was no opinion in the Municipal Court of Trenton. Appeal was taken to the Appellate Division but sua sponte the New Jersey Supreme Court heard and decided the case as above stated.

Jurisdiction

Jurisdiction of this Court is invoked under Section 1257(3) of Title 18 of the United States Code. As plainly appears from the opinion of the New Jersey Supreme Court, reported at 46 N.J. 510, 118 A.2d 147, Petitioners contended that ~~their~~ ~~constitutional~~ rights under the United States Constitution had been violated and these contentions were adequately raised and preserved and were actually passed upon by the New Jersey Supreme Court.

Questions Presented

1. Whether a peaceable member of an audience at a ~~[illegible]~~ public hearing ~~on a controversial matter~~ controversial, who is known to hold views sympathetic to speakers at such meeting but opposed to those of the chairman, and who is ordered to

leave by the chairman and ~~remains~~ chooses to remain peacefully in the auditorium, without obeying the direction of the chairman or the police, and is thereupon forcibly removed by the police, may constitutionally be convicted of violating Chapter 2 A: 170-28 of the New Jersey Statutes which defines as a "disorderly person" one who "by noisy or disorderly conduct disturbs or interferes with the quiet or good order of any place of assembly . . . ."

2. Whether Chapter 2 A: 170-28 of the New Jersey Statutes ~~on its face, or~~ as construed and applied in this case to remove from a controversial public hearing a peaceful person known to hold views opposed to the chairman, is constitutional, or whether that statute, on its face, seemingly applying to "unruly" meetings, becomes unconstitutionally vague and indefinite when applied to a controversial public meeting.

3. Whether a person who has been removed by the police from a public auditorium and has been detained by them in the adjacent public corridor may constitutionally be convicted of violating Chapter 2 A: 170-29(2)(b) of the New Jersey Statutes, which defines as a "disorderly person" one who "in any place, public or private . . . obstructs, molests or interferes with any person lawfully therein" when, while detained by the police, he ~~sits down~~ (is placed by the police) on the floor of the public corridor and remains sitting there peaceably for a short time until he is removed by the police.

4. Whether, after one peaceable member of the audience at a public hearing has been forcibly removed by the police and detained by them in the adjacent public corridor, several other persons who have been attending the said public meeting, sit down in the same corridor adjacent to him and remain there

designed to protect areas or places of worship such as libraries, schools and the like

peaceably for a short period until removed by the police, may constitutionally be convicted of violating Chapter 2 A: 170-29(2)(b) of the New Jersey Statutes, by obstructing or "interfering" with persons lawfully therein, when not more than one person claims to have been "inconvenienced" and that person for one minute or less, and when there is testimony that others went in and out without difficulty

5. Whether Chapter 2 A: 170-29(2)(b) of the New Jersey Statutes on its face or as construed and applied in this case to persons sitting for a short time in a public building where they have business, is constitutional, during ~~work~~ hours when it is open to the public or whether it is unconstitutionally vague and indefinite since the New Jersey supreme court by upholding these convictions is defining "obstruction" in a manner not in commonuse.

<u>Constitutional Provisions and Statutes</u>

United States Constitution
First Amendment

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Fourteenth Amendment

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property,

without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

* * *

New Jersey Statutes
Chapter 2A: 170-28

DISTURBING ASSEMBLIES

Any person who by noisy or disorderly conduct disturbs or interferes with the quiet or good order of any place of assembly, public or private, including schools, churches, libraries and reading rooms, is a disorderly person.

Chapter 2A: 170-29(2)(b)

OFFENSIVE LANGUAGE: MOLESTING OR INTERFERING WITH PERSONS

2. Any person who, in any place, public or private, . . .

(b) Obstructs, molests or interferes with any person lawfully therein; . . . is a disorderly person.

Statement

Each of the Petitioners was convicted in the Municipal Court of the City of Trenton, after joint trial in a "quasi-criminal action" under the New Jersey Disorderly Persons Act, of violating Chapter 2A: 170-28 and Chapter 2A: 170-29 of the New Jersey Statutes. On appeal to the Mercer

County Court, and after a trial de novo, the Petitioner Callender was again convicted of violating Chapter 2A: 170-28 and Chapter 2A: 170-29(2)(b), and each of the remaining petitioners was convicted of violating Chapter 2A: 170-29(2)(b) although they were acquitted of the Chapter 2A: 170-28 charge.

Each of Petitioners was fined $100 on each count for which he was convicted.

The events out of which these charges and convictions arose are not in serious dispute.

The City Council of Trenton held a meeting on the evening of May 5, 1964 for the purpose (among other things) of hearing testimony from interested persons on the John Fitch Way Project, an urban redevelopment plan in a largely Negro area. That project was highly controversial in that it involved the removal of several hundred poor families, and the erection of middle-income housing in the vacated area (beyond the capacity of those removed today). There was known to be considerable dissatisfaction with the adequacy of arrangements for relocating the persons displaced by the project. The Council was aware of this distress and that a number of interested persons and organizations, including the Congress of Racial Equality ("CORE") and the National Association for the Advancement of Colored People ("NAACP") planned to come before the Council at the May 5 meeting and express their objections. A large number of people actually attended the meeting for this purpose; many members of the audience, including CORE and NAACP, brought signs which they at times waved to show their support of the various speakers, and on a number of occasions many members of the audience vocally applauded various of the speakers. (7a, 12a, 24a, 28a, 37a, 41a, 42a, 45a, 48a, 53a, 54a, 57a) Noisy meetings were common enough on similar occasions ( )

As the meeting progressed, ~~a number of~~ many members of the audience ~~seemingly~~ felt that certain Council members, particularly President Walsh, by their comments and questions, were harrassing some of the speakers and unsympathetic to their predicament. There were expressions like "Let him speak"; "Let him say what he wants". (37a, 42a, 45a, 58a) There is no evidence that any of Petitioners made any of these remarks. At one point a speaker residing in the Fitch Way project, when time came for his rebuttal, asked the Council if they had received the Governor's substantial burdens. The chairman of the meeting, Council President Walsh, looked toward Petitioner Callender, who is a prominent spokesman for CORE and its director of organization and was sitting in an area of the hall in which there were obviously a number of members of CORE and NAACP and other persons who opposed the Fitch Way project, and asked for quiet. (4a, 6a although there was no evidence that Callender had done or said anything. He repeated his "admonition" a few minutes later, again looking toward the area where Petitioner Callender was sitting. According to President Walsh's testimony, he stated that "if there were not silence [he] would have to ask them to leave or ask them to be removed by the sergeant-at-arms. And as an immediate reply or retort to that statement [President Walsh] was looking over at Mr. Callender, and Mr. Callender said, "We have not begun to interrupt your meeting yet", which [Mr. Walsh] took to be a challenge, a threat, in addition to being a disturbance [,] that more was to come . . . ." ~~Mr. Walsh thereupon told~~ Instead of understanding the clamor he himself had caused, Mr. Walsh thereupon told the police to "escort" Petitioner Callender from the room, but having done anything wrong. Callender remained in his seat and linked arms with the person sitting next to him.

Two policemen, Sergeant McDonough and Patrolman Downing, came down and carried Callender out of the meeting room and into the corridor, where they "deposited" him on the floor. (4a, 13a, 19a, 20a)

It is Callender's position that he was instructed to remain in the corridor by the police because he was under arrest by reason of the incidents inside the hearing room, and in fact Callender was arrested and charged on the basis of these incidents. The New Jersey Supreme Court, however, took the position that Callender was asked to leave by the police, along with the other petitioners, and, by his silence, refused to go. (118 A.2d at 152) While the New Jersey Supreme Court characterized the State's evidence on this point as "firm", Ibid, the evidence of the arresting officers, called by the prosecution, is at best confusing. According to Sergeant McDonough, Callender was arrested in the hearing room and was carried out under arrest (62a). He told the other five petitioners that they were "free" to go, but clearly did not make such a remark to Callender (61a). Patrolman Downing, the other arresting officer, took the position that Callender had not been placed under arrest inside the chamber (22a, 25a, 59a). He testified that he told petitioners "as a group" that they were free to go, but conceded subsequently that he addressed this offer only to the other five petitioners and not to Callender. (60a) The evidence is clear that Officer Downing

remained with Callender at all times after he helped to remove him from the chamber.* It is, of course, conceded that one of the charges against Callender, upon which he was arrested and convicted, was that he was "disorderly" within the chamber, prior to his removal, which would appear to contradict the "firm" conclusion of the New Jersey Supreme Court that he was free to go. It would seem clear that if he was charged for what he allegedly did in the chamber, then he was not free to go.

As soon as Callender was carried out of the chamber by the police, out of sympathy and fear for Callender's safety the five remaining petitioners also left the chamber, and finding Callender sitting in the hallway with Officer Downing, grouped themselves in a rough circle near where Officer Downing had placed him (19a). They remained there quietly until they were removed by the police, a short time later. It is undisputed that they were asked to leave by the police and by their silence, refused to do so. One Petitioner, Smith, testified that when he approached Callender in the hall and saw him restrained by the police, he said, "Well, Herb [Callender], if they're going to take you to jail then I don't think you should go by yourself and I'm going to stay with you." (38a) Petitioner Crittenden testified that as he came out of the hall, he found Callender and several other of the petitioners sitting on the floor and was standing there watching, when one of the officers asked him, "Are you in or out?" He decided he was "in" and sat down also (51a)

* Petitioners Callender, Smith and Amis testified that Officer Downing went further and prevented Callender from getting up, much less leaving (40-41a, 43a, 55a). Officer Downing denied this (59a), and Sargeant McDonough supported this testimony (61a).

There is no evidence that the incidents that occurred in the corridor outside the hall were part of any preconceived plan (See 47a), ~~the~~ or that they disturbed anyone in the corridor.

While the statute in question speaks in terms of "interference" or "obstruction" of persons lawfully in a place, there was little or no evidence that the group in the corridor in fact inconvenienced any one. The City Council's Clerk, Stanley Maziary, testified that he had some difficulty opening the chamber door because of the people sitting outside (5a, 8a, 9a), but conceded that at most two or three of petitioners were in a position to block the door, whom he did not identify (9a; See also 20a, 22a). It was, however, possible to close the doors (15a, 21a), and other persons passed through the doors, without Officer Downing noticing that they had any difficulty, and without their complaining to him (22a, 23a, 40a, 43a, 44a, 46a, 47a, 50a, 51a, 52a, 53a, 55a, 56a, 60a).

The Mercer County Court, on the above evidence, convicted Callender for disorderly conduct inside the chamber (in violation of Section 2A: 170-29 of the New Jersey Statutes) on the basis of his conduct after he was asked to leave by the Chairman and the police (63a). It dismissed this charge as to all other petitioners.

As to the alleged violation of Section 2A: 170-29, the obstruction or interference charge, the Court conceded

that it "wasn't a great deal of uproar . . ." or "a great interference" (64a). The Court expressed its understanding of the "concern of the City Hall, not necessarily entirely what these persons themselves do in a situation such as this but . . . with what other people in the chamber are going to do as a result of what they do . . . ." It then construed "obstruct" as not necessarily "blocking" a door, but as equivalent to "hindering" and found that all of the petitioners, by sitting in the hall, "obstructed" and "interfered" in violation of the statute (64a). It should be pointed out that the first definition in almost all dictionaries of "obstruct" is to "block up"*

The New Jersey Supreme Court affirmed the convictions, and thus presumably accepted this definition given obstruct by the County Court.

With respect to the charges against Callender arising out of the occurrences within the chamber attendant upon his removal, it rejected Callender's arguments that:

(1) The statute could not be applied to reach wholly passive conduct, viz., failing to cooperate with the police who were removing him against his will.

(2) As applied, the statute violated Callender's rights under the First Amendment, made applicable to the States by the Fourteenth Amendment.

(3) Callender had a right not to remove himself voluntarily in order to challenge the

*

validity of the President's order that he be removed, since he had done nothing to warrant removal. His own callousness causing considerable dissent cannot be the prop upon which President Walsh may arbitrarily exercise Police authority.

(4) The removal order was in fact invalid;

and applying as it did to quiet meetings

(5) The statute was void for vagueness when applied to this meeting; Nor was their any showing that Callender had done anything to disturb the meeting; at most Callender's conduct had disturbed Walsh not the meeting. The Walsh meeting thus denying Callender due process

(6) As to the charges against all the petitioners arising out of the incidents outside the chamber, the Court, as already noted, rejected (on grounds of credibility) Callender's contention that he was compelled to remain by the police, and then rejected petitioners' arguments that:

(1) The statute did not reach their conduct since they neither obstructed nor interfered with anyone, and was therefore unconstitutionally vague as applied; and

(2) The statute on its face and as applied interfered with their constitutional right to express their grievances in a peaceful manner against the removal and arrest of Callender.

Reasons For Granting the Writ

Let us first consider ~~the~~ what took place inside the City Council chamber since it precipitated all other activities

~~Since it is clear that the "sit-in", if such it should be called outside the hall was the result of the removal of Callender, it is the removal which must first be treated.~~

The New Jersey Supreme Court treated this aspect of the case as one involving the rights of a public body to control

a heckler and preserve order. In so doing, we submit, it missed the point and misconceived the evidence. There is no suggestion that Petitioner Callender was a "heckler" up to the moment when Council President Walsh singled him and his companions out. Rather, he was exercising his undoubted right to participate, as a member of the audience, at a disputatious public hearing, and by his presence, to support the position which he, and almost all other members of the audience, took on an important public issue, concerning the welfare of poor resident families about to be removed. (Sadly this was a typical case proving the truth of the saying "urban renewal is Negro removal") Surely, it is well understood that the role of an audience at a public hearing, particularly at the local government level, is far more than that of auditors. They participate in the hearing and express their position and their interest, and even attempt to persuade public officials, by the act of being present. Most local governments accept and even welcome this participation as an index of the feelings of their electorate and as a constructive outlet for those feelings. Certainly the witnesses in this case recognized it. The public hearing on the Fitch Way project was not customary but was called because of the fact that it was known to be controversial and to have aroused strong objections (12a). One witness described the atmosphere in the chamber as "electric" (48a).

The question in this case is whether and to what degree the public officials at such a meeting may exercise police control over ~~this~~ means of expression, making him unhappy, and specifically how far ~~they~~ he can go

in preventing and discouraging ~~this~~ expression by those who are known to disagree with them under the guise of keeping order.

The evidence is clear that after inviting the hubbub by his callous remarks President Walsh ~~invited~~ brought this incident when he singled out those who opposed his view and told them to keep quiet or leave. When petitioner Callender, rightly or wrongly, considering that the remark was directed at him, ~~and~~ defended himself, he was improperly ordered to leave and then physically removed. The Chairman, and the Court, defended his conduct on the grounds of concern about what <u>might</u> happen next, but in fact nothing did happen, although in the process of "restoring order" by forcibly removing Callender, the public officials themselves not only engaged in conduct far more disorderly and more likely to incite a disturbance than Callender's one remark, but precipitated the ~~entire~~ incident in the first place. To permit a public official to exercise arbitrary police power in order to suppress vocal opposition to himself has created is hardly conducive to a respect for law. It does explain, however, the commonly held view that instead of the negro students, such as some assisting public officials, wish to suppress him under the cover of "urban renewal", and "arrest them when they hit the streets" in "guilt".

This right of a member of the audience is, we submit, the central question in this case, and which has never been directly passed upon by this Court. In the context of this case, this question necessarily involves also the constitutionality of the application to Callender's conduct of a typically vague and indefinite "disorderly conduct" statute which, we submit, fails sufficiently to define as unlawful Callender's conduct or to respect the limitations upon "disorderly conduct" statutes required to meet free speech rights of which this Court wrote in <u>Cox v.</u>

Louisiana, U.S. , 85 S. Ct. 453 (1965); cf. Edwards v. South Carolina, 372 U.S. 229 (1962), Brown v Louisiana — U.S. — (1966)

II.

The conviction of the petitioners for their conduct outside the chamber raises slightly different questions. It was of course fundamental that Callender, himself, could not be convicted for disorderly conduct outside the chamber if, as he and several witnesses testified, he was sitting in the hallway because that is where the police officers put him and kept him. The New Jersey Supreme Court felt no obligation to pass on this point because it accepted the trial court's finding that Callender was told he was free to go, despite the contradiction in the state's own evidence. It found the State's evidence on this point "firm". But this cannot end the inquiry. While the defendants' proof was consistent that Callender was prevented from going, the evidence of the two arresting officers was flatly inconsistent. One testified that he considered Callender under arrest when he removed him from the chamber; the second thought he was arrested later, but conceded, when he was recalled, that he omitted Callender when he told the other petitioners they were free to go. On this state of the evidence, we submit, it was again a violation of Callender's rights to convict him as a "disorderly person".

But there is a more fundamental problem with the convictions on this charge against all of the petitioners. Whether Callender remained in the corridor voluntarily or not, the evidence is clear that petitioners sat down, in the corridor

Similarly we raise the question of whether a statute on its face applicable to a certain class of situation in the ~~[illegible]~~ can constitutionally be used to convict a person of a public gathering of an entirely different character when the evidence of the situation is firm. But this cannot end the inquiry. While the defendants' proof was consistent that Callender was prevented from going, the evidence of the two arresting officers was flatly inconsistent. One testified that he considered Callender under arrest when he removed him from the chamber; the second thought he was arrested later, but conceded, when he was recalled, that he omitted Callender when he told the other petitioners they were free to go. On this state of the evidence, we submit, it was again a violation of Due Process of law. The ~~[illegible]~~ of a statute to obtain ~~[illegible]~~ It, as the Supreme Court of New Jersey has determined, this statute governs the conduct under inquiry, then the question, then the only the statute does not set standards reasonably understandable to all persons as to what constitutes fair, it ~~[illegible]~~ thereunder. Winters v New York, 333 U.S. 507 (1948)

of the City Hall, to which they had come on proper business and where they had a perfect right to go and be, to exercise peacefully protest Callender's eviction from the chamber and his arrest based on what occurred in the chamber; ~~and tha~~t their conduct was at all times quiet and peaceful. They interfered with no one's access to the chamber or at ~~best~~ worst created minimal inconvenience, as the de novo trial judge clearly acknowledged. ~~It~~ What petitioners had done was not a great deal of uproar, nor was it a "great interference" (R. 67a) At most they acted in a manner displeasing to ~~both~~ the police. May we suggest that this cannot constitutionally be the basis for a conviction hereunder. No crowd collected, no riot or breach of the peace was threatened. ~~In fact~~, one of the petitioners joined the sitters on the off-hand suggestion of a policeman. (All was so casual and peaceful at this time that no evidence exists that anyone was disturbed) To convict petitioners on this evidence, for violation of a disorderly conduct statute which prohibits obstruction or interference with persons lawfully present in a place, is, we submit, precisely the same misuse and blanket application of a disorderly conduct statute beyond its fair intendment and in breach of constitutional rights as this Court has frequently condemned. Cf. Edwards v. South Carolina, supra; Cox v. Louisiana, supra.

~~II~~ In addition we urge that an analysis of the words of the statute reflect an additional violation of due process of law. The three operative words are "obstruct, molests, or interferes..." no question of molestation arises and that may be discarded. But the word "obstruct" clearly means "block up" No evidence of blocking up exists as the trial judge acknowledge. ~~(A) we have stated that~~ The word "interfere" means "to hinder" ~~presumably~~ and presumably may cover conduct of the same general nature as "obstruct" but not ~~the~~ involving a blocking. We suggest that such a statute is unconstitutionally vague. ~~Obstruct~~ "Obstruct" and "interfere", although concerned with the same kind of conduct have different meanings. Every obstruction is presumably an interference, but it can hardly be said that (over)

~~Conclusion~~

~~For the foregoing reasons this petition for a Writ of Certiorari should be granted.~~

Respectfully submitted,

~~June 1966~~

every "interference" is an "obstruction". In this part the trial court confused the matter further by saying the acts were not a "great interference". How something less than a great interference can constitute "obstruct" is hard to understand. When "interfere" is "obstruct" applies and when "interfere" is the prevailing word is not clear except that the New Jersey Courts, in this case, have chosen to ignore the word "obstruct". Due process can hardly be served by a statute under which a person does not know in advance which of the words the Court will select for his purpose. Nor can we say that the New Jersey Court has the right to change the legislative will by striking out "obstruct". Whatever the New Jersey legislature meant by its use may not be clear, but to eliminate it in order to simplify the conviction of petitioners does not meet constitutional standards

CONCLUSION

For these reasons petitioners respectfully urge that this petition for a writ of Certiorari be granted.

Respectfully Submitted
Carl Rachlin
Albert E. Reeder

of Counsel
Stephen Nagler
Fox

Supreme Court of the United States

No. ---------- *, October Term, 1965*

LOUIS S. SMITH, ET AL,

Petitoners,

vs

NEW JERSEY

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI

UPON CONSIDERATION of the application of counsel for petitioner(s),

IT IS ORDERED that the time for filing a petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including July 19th, 19 66

/s/ WILLIAM J. BRENNAN, JR.
Associate Justice of the Supreme Court of the United States

Dated this 17th
day of June, 19 66

In the

Supreme Court of the United States

October Term, 1966

No. .....

Louis S. Smith, Herbert E. Callender, Marva L. Amis, Lily R. Lewis, Williard D. Crittendon, Joyce L. Schurik,

Petitioners,

—v.—

The State of New Jersey,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEW JERSEY

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Petitioners,

—v.—

The State of New Jersey,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEW JERSEY

Petitioners pray that a Writ of Certiorari issue to review the mandate on affirmance of the Supreme Court of the State of New Jersey entered in the above entitled action on March 21, 1966.

Citations to Opinions Below

The New Jersey Supreme Court affirmed the convictions of the defendants in an opinion which is reported, *sub nom. State of New Jersey* v. *Louis S. Smith,* at 46 N. J. 510, 118 A. 2d 147 (1966), a copy of which is attached to the Appendix-Record. The Mercer County Court, from which the appeal to the Supreme Court was taken, convicted Petitioner Callender of violating Chapter 2A:170-28

of the New Jersey Statutes (which prohibits noisy or disorderly conduct in certain places of public assembly) and convicted all of the Petitioners of violating Chapter 2A: 170-29 (2) (b) of the New Jersey Statutes which prohibits one from obstructing, molesting or interfering with another in a public place. The Mercer County Court heard the cases on trial *de novo* appeal from convictions of all petitioners on both charges by the Municipal Court of Trenton. The opinion of the Mercer County Court (Hon. J. Wilson Noden, Justice of the County Court), which is not officially reported, is printed as part of the Appendix, used as a record (62a-65a).* There was no opinion in the Municipal Court of Trenton. Appeal was taken to the Appellate Division but *sua sponte* the New Jersey Supreme Court heard and decided the case as above stated.

Jurisdiction

Jurisdiction of this Court is invoked under Section 1257 (3) of Title 18 of the United States Code. As plainly appears from the opinion of the New Jersey Supreme Court, reported at 46 N. J. 510, 118 A. 2d 147, Petitioners contended that under the United States Constitution rights had been violated and these contentions were adequately raised and preserved and were actually passed upon by the New Jersey Supreme Court.

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* Numbers in parentheses unless otherwise indicated refer to pages of the Appendix used in the Supreme Court of New Jersey, prepared from the stenographic minutes of trial in the Mercer County Court, and stipulated as the record by all parties concerned.

Questions Presented

1. Whether Chapter 2A:170-28 of the New Jersey Statutes designed to protect places of quiet such as churches, libraries, schools and the like, as construed and applied in this case to remove from a controversial public hearing a peaceful person known to hold views opposed to the chairman is constitutional; or whether that statute, on its face applying to "quiet" assemblies becomes unconstitutionally vague and indefinite when applied to a knowingly controversial public meeting.

2. Whether a peaceable member of an audience at a controversial public hearing, known to hold views sympathetic to speakers at such meeting but opposed to those of the chairman, and who is ordered to leave by the chairman but chooses to remain peacefully in the auditorium, thus not obeying the direction of the chairman or the police to leave and is thereupon forcibly removed by the police, may constitutionally be convicted of violating Chapter 2A:170-28 of the New Jersey Statutes which defines as a "disorderly person" one who by "noisy or disorderly conduct disturbs or interferes with the quiet or good order of any place of assembly public or private, including schools, churches, libraries and reading rooms. . . . "

3. Whether a person improperly ordered to leave a controversial public meeting, who refuses to do so and is forcibly removed, may be constitutionally convicted under the said Chapter 2A:170-28.

4. Whether a person who has been removed by the police from a public auditorium and has been detained and placed

by them in the adjacent public corridor and remains there peacefully until removed by the police, may constitutionally be convicted of violating Chapter 2A:170-29 (2) (b) of the New Jersey Statutes, which defines as a "disorderly person" one who "interferes with any person lawfully therein".

5. Whether, after one member of the audience, behaving in the same peaceful but disputatious way as others present at a public hearing, has been forcibly removed by the police and detained by them in the adjacent public corridor, and several other persons who have been attending the said public meeting, sit down in the same corridor, adjacent to him, and remain there peaceably for a short period until removed by the police, may constitutionally be convicted of violating Chapter 2A:170-29 (2) (b) of the New Jersey Statutes, by obstructing or "interfering" with persons lawfully therein, when not more than one person, an employee of the Trenton Council, claims to have been "inconvenienced" and that person for one minute or less, when there is substantial testimony that others went in and out without difficulty.

6. Whether Chapter 2A:170-29 (2) (b) of the New Jersey Statutes on its face or as construed and applied in this case to persons sitting for a short time in a public building during hours when it is open to the public and where they have business, is constitutional; or whether it is unconstitutionally vague and indefinite because the New Jersey Supreme Court defines "obstruction" in a manner not in common use, and whether a conviction under such definition is a denial of due process.

Constitutional Provisions and Statutes Involved

United States Constitution
First Amendment

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Fourteenth Amendment

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

* * * * *

New Jersey Statutes

Chapter 2A:170-28

Disturbing Assemblies

Any person who by noisy or disorderly conduct disturbs or interferes with the quiet or good order of any place of assembly, public or private, including schools, churches, libraries and reading rooms, is a disorderly person.

Chapter 2A:170-29 (2) (b)

Offensive Language: Molesting or Interfering With Persons

2. Any person who, in any place, public or private,

(b) Obstructs, molests, or interferes with any person lawfully therein . . . is a disorderly person.

Statement

Each of the Petitioners was convicted in the Municipal Court of the City of Trenton, after joint trial in a "quasi-criminal action" under the New Jersey Disorderly Persons Act, of violating Chapter 2A:170-29 of the New Jersey Statutes. On appeal to the Mercer County Court, and after a trial *de novo,* the Petitioner Callender was again convicted of violating Chapter 2A:170-28 and Chapter 2A: 170-29 (2) (b), and each of the remaining petitioners was convicted of violating Chapter 2A:170-29 (2) (b) although they were acquitted of the Chapter 2A:170-28 charge. Each of Petitioners was fined $100 on each count for which he was convicted. On appeal to the Appellate Division, the *Supreme Court, sua sponte,* certified the appeals, prior to argument. The opinion is attached to the Appendix Record.

The City Council of Trenton held a public meeting on the evening of May 5, 1964, for the purpose (among other things) of hearing testimony from interested persons on the John Fitch Way Project, an urban redevelopment plan in a largely Negro area. Highly controversial, the project involved the removal of several hundred poor families, and the erection of middle-income housing in the vacated area priced beyond the ability to pay of those removed. Considerable dissatisfaction with the adequacy of arrangements

for relocating the persons displaced by the project was known to exist as well as the fact that the project would favor white middle class persons over the poor Negro residents of the area. Aware of this distress of a number of interested persons and organizations, including the Congress of Racial Equality (CORE) and the National Association for the Advancement of Colored People (NAACP), the Council called a meeting for May 5, knowing objections would be expressed. Many persons actually attended the meeting for this purpose, including members of CORE and the NAACP. Signs were in evidence and were waved to show support of the various speakers. On a number of occasions many members of the audience vocally and vociferously applauded various speakers (7a, 12a, 24a, 28a, 37a, 41a, 42a, 45a, 48a, 53a, 54a, 57a). Noisy meetings of the City Council were common enough on other occasions (17a).

As the meeting progressed, members of the audience felt that certain Council members, particularly President Walsh, by their comments and questions were harassing some of the speakers and showed a callous lack of sympathy to their predicament. Expressions such as "Let him speak"; "Let him say what he wants." (37a, 42a, 45a, 58a) were heard. There is no evidence that any of Petitioners made any of these remarks. At one point when a speaker, a long time resident of the community, expressing his despair asked, "where shall I go?" received an apparently callous response from Walsh who "didn't know" (37a, 42a, 45a), a substantial murmur broke out. Council President Walsh, the chairman, looked toward Petitioner Callender, a prominent spokesman for CORE and its director of organization. Callender was sitting in an area of the hall where there were obviously a number of members of CORE

and NAACP as well as other persons opposed to the Fitch Way Project, but there was no evidence that Callender had done or was about to do anything. Walsh asked for quiet (4a, 6a). He repeated his "admonition" again looking toward the area where Petitioner Callender was sitting. According to President Walsh's testimony, he stated that "if there were not silence (he) would have to ask them to leave or ask them to be removed by the sergeant-at-arms. And as an immediate reply or retort to that statement (President Walsh) was looking over at Mr. Callender, and Mr. Callender said, 'We have not begun to interrupt your meeting yet,' which (Mr. Walsh) took to be a challenge, a threat, in addition to being a disturbance (,) that more was to come. . . ."

Instead of understanding the clamor he himself created, and trying to calm the meeting down by clarifying whether Callender's choice of words were meant as a threat or not, he acted precipitately and directed the police to "escort" Petitioner Callender from the room. Not having done anything wrong to warrant his eviction, Callender remained in his seat linking arms with the person sitting next to him. Two policemen, Sergeant McDonough and Patrolman Downing, came down and carried Callender out of the meeting room and into the corridor, where they "deposited" him on the floor (4a, 13a, 19a, 20a).

Callender urges that he was instructed to remain in the corridor by the police because he was under arrest by reason of the incidents inside the hearing room. In fact, Callender was arrested and charged on the basis of these incidents inside the Chamber. The New Jersey Supreme Court, however, took the position that Callender was asked to leave by the police, along with the other petitioners,

and, by his silence, refused to go (46 N. J. at 520, 118 A. 2d at 152). While the New Jersey Supreme Court characterized the State's evidence on this point as "firm," *ibid.*, the evidence of the arresting officers, called by the prosecution, is at best confusing and perhaps contradictory. According to Sergeant McDonough, Callender was arrested in the hearing room and carried out under arrest (62a). On the other hand, the other five petitioners were "free" to go, but clearly this did not apply to Callender (61a). Patrolman Downing, the other arresting officer, stated that Callender had not been placed under arrest inside the chamber (22a, 25a, 59a). He testified that he told petitioners "as a group" that they were free to go, but conceded subsequently that he addressed this offer only to the other five petitioners but not to Callender (60a). At all times Officer Downing remained with Callender after he helped to remove him from the chamber.* It is, of course, conceded that one of the charges against Callender, upon which he was arrested and convicted, was that he was "disorderly" within the chamber, prior to his removal, which would appear to contradict the "firm" conclusion of the New Jersey Supreme Court that he was free to go. If he was charged for what he allegedly did in the Chamber, then he was not free to go, and accordingly it is difficult to understand upon what basis the evidence was "firm."

As soon as Callender was carried out of the chamber by the police, the five remaining petitioners also left the chamber. Finding Callender sitting in the hallway with Officer

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* Petitioners Callender, Smith and Amis testified that Officer Downing went further and prevented Callender from getting up, much less leaving (40-41a, 43a, 55a). Officer Downing denied this (59a), and Sargeant McDonough supported this testimony (61a).

Downing standing over him, they grouped themselves in a rough circle near the place Officer Downing had placed Callender (19a). No dispute exists that they remained there quietly until they were removed by the Police, a short time later, although it is disputed whether or not they were asked to leave the corridor by the police (40a) and by their silence, refused to do so. The Police testified they requested them to leave (23a, 29a).

One Petitioner, Smith, testified that when he approached Callender in the hall and saw him restrained by the police, he said, "Well Herb (Callender), if they're going to take you to jail then I don't think you should go by yourself and I'm going to stay with you" (38a). Petitioner Crittenden testified that as he came out of the hall, he found Callender and several others of the petitioners sitting on the floor and was standing there watching *when one of the officers asked him,* "Are you in or out? After a little thought he decided he was "in" and sat down also (51a). There is no evidence that the incidents that occurred in the corridor outside the hall were part of any preconceived plan (47a), or that they disturbed anyone in the corridor.

While the statute in question speaks in terms of "Interference" or "Obstruction" of persons lawfully in a place (clearly there was no molestation), there was hardly any evidence that the group in the corridor in fact interfered with anyone. The City Council clerk, Stanley Maziarz, testified that he had some problem opening the chamber door because of people sitting outside (5a, 8a, 9a). See also 20a, 22a. It was, however, possible to close the doors (15a, 21a). In evaluating this testimony it should be noted that other persons passed through the doors, without Officer Downing observing that they had any difficulty; nor did

anyone complain to him (22a, 23a, 40a, 43a, 44a, 46a, 47a, 50a, 51a, 52a, 55a, 56a, 60a).

The Mercer County Court, on the above evidence, convicted Callender for disorderly conduct inside the chamber (in violation of Section 2A:170-29 of the New Jersey Statutes) on the basis of his conduct after he was asked to leave by the Chairman and the police (63a). It dismissed this charge as to all other petitioners.

As to the alleged violation of Section 2A:170-29, the obstruction or interference charged, the Court conceded that it "wasn't a great deal of uproar . . ." or a "great interference" (64a). The Court expressed its understanding of the "concern of the City Hall, not necessarily entirely what these persons themselves do in a situation such as this but . . . with what other people in the chamber are going to do as a result of what they do. . . ." It then construed "obstruct" as not necessarily "blocking" a door but as equivalent to "hindering" and found that all of the petitioners, by sitting in the hall, "obstructed" and "interfered" in violation of the statute (64a). It should be pointed out that the first definition in almost all dictionaries of "obstruct" is to "block-up."

The New Jersey Supreme Court affirmed the convictions, and accepted the definition given "obstruct" by the County Court. "It does not matter that persons managed to get by or that none was delayed for anything beyond a minute" (46 N. J. at 520). The Supreme Court apparently misread the record since in this connection it said:

> "the Constitution does not accord to all who disagree with the order of the presiding officer, a right to stretch

out across the entrance to the forum" (46 N. J. at 521-522).

No evidence of stretching across the entire entrance to the chamber is in the record. Even Maziarz did not claim that.

With respect to the charges against Callender arising out of the occurrences within the chamber attendant upon his removal, it rejected Callender's argument that:

1. As applied, the statute violated Callender's rights under the First Amendment, made applicable to the States by the Fourteenth Amendment, to protest the callous attitude of the chairman as well as the housing program itself.

2. Callender had a right not to remove himself voluntarily in order to challenge the validity of the President's order that he be removed since he had done nothing to warrant removal. His own callousness causing considerable dissent cannot be the prop upon which President Walsh may arbitrarily exercise police authority. In this regard it should be noted that the Supreme Court said that "... the more fundamental answer is that the decision of the presiding officer cannot be tested by physical resistance. The remedy, if there is one, must lie elsewhere" (46 N. J. at 517).

Petitioners urge that this is an incorrect statement of the law. *Brown* v. *Louisiana,* 383 U. S. 131 (1966); *Shuttlesworth* v. *Birmingham,* 382 U. S. 87 (1965). The Supreme Court of New Jersey thus supports a proposition that one must obey the police order regardless of how illegal that

order. This was not a legislative meeting requiring silence from spectators, but a public meeting: nor was it a court session; it is pure emotionalism, not legal reasoning to compare a disputatious gathering to a court hearing. It must be noted also, that the Court's use of the term "physical resistance" (46 N. J. at 517) in light of what actually happened is open to question. Callender resisted no one, he merely refused to cooperate in an illegal arrest.

3. The statute could not be applied to reach wholly passive conduct, *viz.*, failing to cooperate with the police who were removing him against his will, and, as he believed, improperly.

4. The removal order was in fact invalid, the statute applying as it did to quiet meetings, not disputatious meetings.

5. The statute was void for vagueness when applied to this meeting since there was no showing that Callender had disturbed this meeting. At most there was a showing that Callender had "disturbed" Walsh who had disturbed the meeting, and an arrest for such a reason is contrary to previous intepretations of the statute and denies due process.

6. As to the charges against all the petitioners arising out of the incidents outside the chamber, the Court, as already noted, rejected (on grounds of credibility) Callender's contention that he was compelled to remain by the police, and then rejected petitioners' arguments that:

   (1) The statute did not reach their conduct since they neither obstructed nor interfered with anyone, and was therefore unconstitutionally vague as applied; and

(2) The statute on its face and as applied interfered with their constitutional right to express their grievances in a peaceful manner, not merely in the manner prescribed by the City Council.

Reasons for Granting the Writ

I.

Let us first consider what took place inside the City Council chamber since it precipitated all other activities.

The New Jersey Supreme Court treated this aspect of the case as one involving the rights of a public body to control a heckler and preserve order. In so doing, we submit, it missed the legal and constitutional point and misconceived the evidence. No evidence exists that Petitioner Callender was a "heckler" up to the moment Council President Walsh singled him and his companions out.

To participate, as a member of the audience in a disputatious public hearing, and by his presence, to support the position which he, and almost all other members of the audience, took on an important public issue, concerning the welfare of poor resident families about to be removed was all Callender sought.

The role of an audience at a public hearing, particularly at the local government level, is far more than that of auditors. Expressing their position, their interest, even attempting to persuade public officials, is the role of the audience at such a meeting by the act of being present. Most local governments accept and even welcome this participation as an index of the feelings of their electorate and as a constructive outlet for those feelings.

The witnesses in this case recognized this. The public hearing on the Fitch Way Project was not customary but was called because of the fact that it was known to be controversial and to have aroused strong objections (12a). One witness described the atmosphere in the chamber as "electric" (48a). That strong feeling existed because the charge that "urban renewal means Negro removal" seemed evident here.

The central question in this case is whether and to what degree the public officials at such a meeting may exercise police control over this right to be present, and by being present, to express a judgment contrary to that of the presiding official. No one stopped Walsh from heckling witnesses unpleasantly; it appears humorous to raise the question. Presumably that was his right. Under the guise of keeping order, however, how far may he use the police power to discourage speech and remove opposition?

The evidence is clear that after inviting the hubbub by his callous remarks, President Walsh further brought on this incident when he singled out those who opposed his view and told them to keep quiet or leave. Although there is no evidence that Petitioner Callender said or did anything when, rightly or wrongly, considering the remark to be directed at him, he defended himself. He was for no more improperly ordered to leave and physically removed. We submit that there was no reason for this order sufficient to override Callender's right to be present in the assembly to protest action contemplated by the Council harmful to the Negro residents of the area.

The Chairman, and the Court, defended his conduct on the grounds of concern about what *might* happen next, but

in fact nothing did happen. This was so in spite of the fact that in the process of "restoring order" by forcibly removing Callender, the public officials themselves engaged in conduct far more disorderly and more likely to incite a disturbance than Callender's reply, and also precipitated the incident in the first place. To permit a public official to exercise arbitrary police power in order to suppress vocal opposition he himself has created is hardly conducive to respect for law.

This right of a member of the audience to be present and to participate is, we submit, the central question in this case, and which has never been directly passed upon by this Court.

Raising this issue in a slightly different form, the Supreme Court of New Jersey recognized the importance of this question:

> ". . . But the more fundamental answer is that the decision of the presiding officer cannot be tested by physical resistance. The remedy, *if there is one,* must lie elsewhere" (46 N. J. at 517). (Italics supplied.)

As can be seen, the Court has doubts as to whether there is any right to test an illegal police order. We submit that the first and foremost place is at the place it occurs. The Supreme Court suggests no other place, and it would be hard to find one.

In the context of this case, this question necessarily involves also the constitutionality of the application to Callender's conduct of a typically vague and indefinite "disorderly conduct" statute which, we submit, fails sufficiently to define as unlawful Callender's conduct or to respect the

limitations upon "disorderly conduct" statutes required to meet free speech rights as this Court wrote in *Cox* v. *Louisiana,* 379 U. S. 536, 85 S. Ct. 453 (1965); cf. *Edwards* v. *South Carolina,* 372 U. S. 229 (1963); *Brown* v. *Louisiana, supra.*

In addition, we raise the question of whether a statute on its face applicable to a clearly defined type of situation, the quiet of churches, libraries, etc. can constitutionally be used to arrest and convict someone at a public gathering of an entirely different character, at which debate and argument are of the very essence of the meeting. Is not the application of such a statute to this situation a violation of due process of law? If, as the Supreme Court of New Jersey has determined, this statute governs the meeting under question, then we urge that the statute does not set standards of guilt reasonably understandable to all persons. *Winters* v. *New York,* 333 U. S. 507 (1948). This is particularly true where previous interpretations of the statute and its antecedents indicate that it would not be applicable. Cf. *Hughes* v. *City of East Orange,* 29 N. J. L. J. 343 (1906); *Handlin* v. *State,* 16 N. J. L. 96 (1837). Compare *Mullen* v. *State of New Jersey,* 67 N. J. L. 451 (1902) in which the court said (at 453):

> "If all who are loud and persistent in soliciting support for their candidates or views at public elections or school meetings are to be held disorderly persons, it will lead to a new view as to who are disorderly persons."

In this regard it should be noted, in trying to meet this argument the Supreme Court of New Jersey stated:

> "Indeed, if 'including' had that effect, the specifics would likely exhaust the general words since it is dif-

> ficult to think of a place which is like, but is not, a school or a church or a library or a reading room" 46 N. J. at 515.

To this we need merely add, as further examples that are like the examples in the statute, museums, hospitals, mortuaries, nursing homes and concert halls. More importantly we may add court and legislative sessions in so far as spectators are concerned. All of these are further examples of places of public assembly where quiet is required. It is stretching credulity to believe, in light of the history of this statute, that any situation, other than a quiet one, was intended to be governed. The so-called 1952 broadening by the legislature intended to cover others of a like nature, such as we have shown, did not open a whole new category of criminal acts, without even giving an example of what it had in mind.

II.

The conviction of the petitioners for their conduct *outside* the chamber raises slightly different questions. It was, of course, fundamental that Callender, himself, could not be convicted for disorderly conduct outside the chamber if, as he and several witnesses testified, he was sitting in the hallway where he had been placed and kept by police officers. The New Jersey Supreme Court felt no obligation to pass on this point because it found the State's evidence on this point "firm" that Callender was told he was free to go.

But this cannot end the inquiry. While the defendants' proof was consistent that Callender was prevented from going, the evidence of the two arresting officers was flatly inconsistent. One testified that he considered Callender

under arrest when he removed him from the chamber; the second thought he was arrested later, but conceded, when he was recalled, that he omitted Callender when he told the other petitioners they were free to go. On this state of the evidence, we submit, it was a violation of due process to convict Callender as a "disorderly person."

But there is a more fundamental problem with the convictions on this charge against all of the petitioners. Whether Callender remained in the corridor voluntarily or not, the evidence is clear that petitioners sat down, in the corridor of the City Hall to which they had come on proper business and where they had a perfect right to go and be, to exercise peacefully the right to protest Callender's eviction from the chamber; their conduct was at all times quiet and peaceful. They interfered with no one's access to the chamber or at worst created minimal inconvenience as the *de novo* trial judge clearly acknowledged (64a). At most, they acted in a manner displeasing to the police. This cannot constitutionally be the basis for a conviction hereunder. No crowd collected, no riot or breach of the peace was threatened. All was so casual and peaceful at this time that one of the petitioners joined the sitters on the off-hand suggestion of a policeman. No evidence exists that anyone was disturbed. To convict petitioners on this evidence, for violation of a disorderly conduct statute which prohibits obstruction or interference with persons lawfully present in a place, is, we submit, precisely the same misuse and blanket application of a disorderly conduct statute beyond its fair intendment and in breach of constitutional rights as this Court has frequently condemned. Cf. *Edward* v. *South Carolina, supra; Cox* v. *Louisiana,* 379 U. S. 536 (1965).

In addition, we urge that on its face the words of the statute reflect an additional violation of due process of law. The three operative words are "obstructs, molests or interferes . . . " [No question of molestation arises and that may be disregarded.] But the first meaning of "obstruct" is "block-up" in all major dictionaries. No evidence of blocking-up exists as the trial judge acknowledges. He chose to say "obstruct" does not mean "block". "Interfere" means to "hinder". We suggest that such a statute is unconstitutionally vague. "Obstruct" and "interfere", although concerned with the same kind of conduct, have somewhat different meanings. Every obstruction is presumably an interference, but it can hardly be said that every "interference" is an "obstruction".

For its part, the trial court confused the matter further by saying the acts were not a "great interference". How something less than a "great interference" can constitute an obstruction is hard to understand. No reasonable standard exists as to when "obstruct" applies and when "interfere" is the prevailing word. What the New Jersey Court has done is to change the legislative will by writing out "obstruct". Whatever the New Jersey legislature meant by "obstruct" it cannot be eliminated in order to simplify the process of convicting the petitioners. Such procedure does not meet proper constitutional standards.

CONCLUSION

For all these reasons Petitioners respectfully urge that this petition for a writ of Certiorari be granted.

Respectfully submitted,

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